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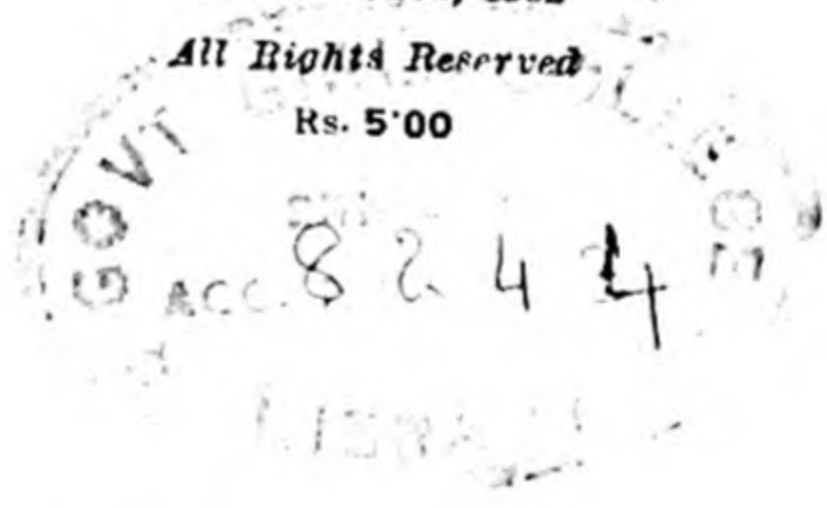

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GOVERNMENT
OF
GREAT BRITAIN

by

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PREFACE TO THE SIXTH REVISED AND ENLARGED EDITION

Due to preoccupation with other more pressing engagements I could not subject my *Government of Great Britain*, first published in 1947, to a thorough revision. Its popularity with the undergradaute students is revealed by the fact that it went through five editions in the course of eight years from 1947 to 1955. All that I could do during the preceding editions was to keep it uptodate. The leisure I had during the past months has been utilised in revising and rewritting it in the light of scholarly works on the British Constitution by writers like Stout, Mathiot, Neumann and Zink which appeared after its first publication. It is expected that the revision of the text and the addition of new matter covering more than sixty pages would make the volume highly useful to the students for whom it is meant.

The work of rendering it in Hindi has been entrusted to my esteemed friend Professor Ganga Prasad Garg who has translated several of my other publications from English into Hindi. I feel certain that the new Hindi edition, which may be put in the hands of the students before the present session is over, would be a very great improvement upon the earlier translation which suffered from many shortcomings.

I am thankful to the printers for having brought it out in a short time in spite of pressure of work.

VIJAY MANDIR,
Civil Lines, Meerut
November 7, 1962

JYOTI PRASAD SUDA

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The Government of Great Britain

Chapter I

INTRODUCTORY: IMPORTANCE, FEATURES AND BASIC PRINCIPLES OF THE CONSTITUTION.

General Importance of the British System.— It is not a matter of accident that writers on Comparative Government like Munro, Ogg, Zink, Neumann, and Carter give the pride of place to the British Constitution in their treatises. There are important reasons for it, and also for the fact that the British political system has been made a special subject of study by important writers, both British and non-British. It has won the admiration of scholars all the world over, and has been described as one of the 'priceless political assets' of mankind. It may justifiably be regarded as *the most* remarkable and influential system in the world.

Writers on constitutional government usually classify systems of government into parliamentary and presidential. Since the systems found in Switzerland and the Soviet Union cannot be easily fitted in this scheme, and note has to be taken of them, we may accept the four-fold division of constitutions into parliamentary, presidential, the Swiss and the Soviet. Of these four, the Swiss system is the least influential; it has not been tried in any country in the world outside Switzerland. The Soviet system has been adopted by the satellites of the Soviet Union and also by China. About a quarter of the total population of the world live under it. But whatever importance this system possesses comes to it from its association with the communist ideology; it would spread in the world only with the spread of international Communism and not because of any merits inherent in the political system itself. The presidential system is confined to the United States and some countries of South America; it has not become so world-wide as the parliamentary system which had its origin in Great Britain. The parliamentary system has spread from Great Britain to the far corners of the world; it has been adopted voluntarily by numerous countries in all the continents. It prevails in all the Dominions of the British Empire. In Europe it

was adopted by republican France in 1875 after several futile experiments with other systems of government. Monarchic countries like Belgium, Holland, Denmark, Norway and Sweden, and even Italy, turned to Great Britain at crucial moments in their history and imitated the British liberal institutions. Peoples of tropical Africa who have won their freedom recently are endeavouring to instal parliamentary institutions on the British model. The same is the case with the recently liberated countries in Asia. We are not here concerned with the varying degrees of success with which parliamentary institutions have been transplanted from Great Britain to distant lands; we simply want to lay stress on the fact that the British system of government which we are going to study in this book is not just the political system of *one* country like the Swiss; it is rather a *type* examples of which are found in a host of countries. In this connection it is interesting to note that the British Constitution has been generally described as the mother of constitutions, and the British Parliament as the mother of parliaments. In view of the great progeny of the British system found all the world over these descriptions are very appropriate. Great Britain was the first country to invent and develop parliamentary institutions which were later on transplanted to other countries, sometimes with great success as in the case of Dominions, and sometimes with less success as in the case of France, Italy, Pakistan, Burma and other Asiatic countries. In the following paragraphs we shall try to set forth the causes of the widespread influence of the British system.

One of the main reasons for this phenomenon is historic. The British settlers took with them the British institutions wherever they went. They took them to Canada, to South Africa, to Australia, and to New Zealand. The British rulers implanted the British system of administration in their colonies and dependencies, and at a later stage introduced in them the parliamentary system. We have a very good illustration of this thing in our own country. When the Britishers acquired political power here, they started administering the areas that came under their control one after the other in their own way. When public opinion began to agitate for the introduction of representative and self-governing institutions on the British model, the authorities passed first the Indian Councils Acts of 1861, 1892 and 1909, and later on the Government of India Acts of 1919 and 1935. A similar story was repeated in many another land. Free

and independent India however adopted the British model of its own free will because of its undoubted excellence. There can be no gainsaying the fact that of all the constitutions and systems of government that have flourished in different parts of the world during the past 2,000 years, the British system is one of the best; it can even be regarded as the best. It is the best because it has been able to provide the most successful and most enduring solution to the most difficult and perennial problem of political science; namely, the problem of reconciling law with liberty, progress with stability, and the State with the individual. The British system demonstrates how government can be popular and at the same time strong and effective. By and large, the British people enjoy the benefits of strong government together with vast civic liberties. Ancient Greece gave the people freedom but not strong and enduring government; ancient Rome gave them stable and effective government but without freedom; it was left to Great Britain to devise a system which would combine stability and effective political authority with liberty. The people of France tried one system after another for about nine decades after the Revolution and finally opted for the British model in 1875. It spread to other European countries from France. The Founding Fathers of the American Constitution also took over what they thought to be elements of value in the British system and gave to the world a different type of government. It is thus evident that, mainly on account of its excellent and remarkable nature, the system of government developed in Great Britain in the course of nearly fourteen hundred years has put its mark on the rest of the world more than any other system. This is the second reason for its world-wide influence.

The British example has been widely followed in the world not only in regard to the parliamentary set-up; it has been no less influential in the sphere of civil liberties, law and local self-government. British contribution in these domains has been important as well as enduring. In the words of Professor Stout, 'Millions of people round the globe now enjoy the civil liberties embodied in the common law, and they live under democratic political institutions inspired by the British Constitution. The independent judge on the bench of the open court and the speaker in his chair before a free legislature are the monuments of the British nation.'*

* Stout: *British Constitution*, page 3.

The British Constitution is remarkable not only for having offered the most successful and enduring solution of the fundamental problem of reconciling the authority of the state with the liberty of the individual and for its having been transplanted to distant lands, it is also remarkable for being the only among the existing constitutions in being the product of a historical development never entirely broken over a period of some fourteen centuries. It has been almost entirely free from violent changes like those witnessed in France, Germany, Russia, China, the United States and elsewhere. The way in which the British people struggled hard and for long against royal absolutism and ultimately succeeded in transforming it into constitutional monarchy in a peaceful way has no parallel in history. In many another country the changeover from despotism to democracy has been marked by violence and bloodshed ; in Great Britain it has been gradual, peaceful and continuous. Its long, continuous and almost unbroken development confers upon it a degree of resilience not met with in any other constitution. It has been able to adapt itself to the changing circumstances and needs of the people in a marvellous way ; it has survived the strain and deadly perils of two great wars without any material damage to itself. Something more would be said about the almost unbroken continuity of British constitutional development in another context.

One more reason may be assigned for the remarkable character of the British Constitution. It has demonstrated to the world the possibility of combining economic planning with democracy. Before the Labour Government introduced planning in the economic sphere in Great Britain, it was usually believed that economic planning was possible only in a totalitarian state ; the Soviet Union which became pioneer in this sphere was and is a totalitarian state. Great Britain has proved the untenable character of this assumption. Following her example, democratic India has also adopted economic planning and, after completing two five year plans, launched the third one.

In the next place, it may be mentioned that the position of Great Britain as one of the major world powers and as the centre of the Commonwealth of Nations also invests her political system with great importance. Though the days of *Pax Britannia* are gone and Great Britain no longer enjoys the position of pre-eminence among the nations of the world she had before the World War I, she yet plays an

important role in world affairs in partnership with the United States of America. 'A healthy Europe and a strong free world are unthinkable without Britain playing a major, even a leading role; and in her civic discipline as well as in the free association of her Commonwealth the world may find much to admire and emulate.'* Membership of the Commonwealth enables free India also to play a role in international affairs which would otherwise have been impossible.

Finally, we may say that the British system possesses a special significance for us in India because of two vital reasons. First: our present system of government is largely modelled on the British pattern; it is parliamentary and not presidential. The President of the Indian Republic is the titular head of the State and occupies a position of irresponsibility like that of the British Queen; real, effective governing authority is lodged in the cabinet which is responsible to Parliament. The President's relation to the Cabinet or the Council of Ministers, and the relation between the Cabinet and the House of the People cannot be understood without a knowledge of the British tradition. Our system of local self-government and the legal system are also based on British lines. We cannot go very far in understanding and running our political institutions without a sound knowledge of British institutions. Second: the noble and grand manner in which the British Government handed over power to the Indian people and relinquished their strangle-hold over the country has no parallel in history. It has bound us to the British people in the closest of ties. Surely, a system of government which can produce such a noble spirit among the people is well worth study.

In the pages that follow an attempt is made to acquaint the undergraduate students with the fundamentals of the British system of government and its operation at the present time. We start our study with an analysis of its nature.

Nature of the British Constitution.— In the preceding account of the importance of the British Political System it has been assumed that there does exist a thing known as the British Constitution. A non-existing thing can hardly be influential or important. But there have been writers who have held that there is no such thing as a Constitution in Great Britain. The earliest among them was Alexis

* Neumann: *European and Comparative Governments*, page 5.

de Tocqueville, an astute French scholar, who once declared that there was no such thing as a Constitution in Great Britain. At a slightly later date Thomas Paine challenged Edmund Burke to produce a copy of the British Constitution. According to him there never existed anything like a Constitution in Great Britain though people talked a lot about it. Sir John Simon, who presided over the Commission sent out to India in 1927 to examine and report on the working of Montford Reforms and suggest further constitutional changes said in the course of a speech delivered in 1935 that just as there were no snakes in Ireland, it could be said that in England they had no Constitution.

Observations like those of Tocqueville, Paine and Simon are indeed true and incontrovertible, if we interpret the term Constitution in a narrow sense. If the term is taken to denote a formal written document adopted by a constituent assembly or drawn up under the direction of a ruling prince or dictator, or drafted by a sovereign legislature like the British Parliament for a colony or dependency like India before 1947, outlining the structure of government, describing the composition, powers and functions of the legislative, executive and judicial organs, and defining the rights and obligations of the citizens, then indeed England never had a Constitution and does not possess one at the present time. The date of birth of a constitution understood in this narrow and formal sense can always be determined; *e. g.*, the Constitution of the United States of America was adopted by the Philadelphia Convention on the fifteenth of September, 1787; the Constitution of the Indian Republic was adopted by the Constituent Assembly on November 26, 1949, and put into force on January 26, 1950. Similarly, one can easily know the exact dates on which the Weimer Constitution, the Stalin Constitution, the Constitutions of the Fourth and Fifth French Republics, etc., were struck off. It is impossible to fix any particular date on which the British Constitution may be said to have been adopted. It is not an enacted constitution at all. On the other hand, it is an *evolved* constitution, the product of a long and continuous process of development. In a word, it is a growth and not a make. Therefore, if by the term 'constitution' we mean a formal and written document adopted on a definite date by a definite group of persons, Great Britain has no constitution.

This, however, is a narrow, and therefore an inadequate definition of the term 'Constitution'. The term has also a broader meaning in which it is generally used these days. In this broad sense it includes all those rules and regulations, principles and statutes, and conventions which determine the form and character of a governmental system, and according to which the game of politics is played in a country. In this sense Great Britain has a constitution which has been growing and developing for more than a thousand years. It consists of 'a mass of principles and practices which one could bring together only by surveying a thousand years of history, by laying hold of a statute here and a judicial decision there, by noting the hardening of political practices into accepted customs, and by probing to their recesses the mechanisms of law-making, administration, public finance, justice, and elections as they actually operate.'* Thus understood, the British Constitution has some features which put it in a class by itself, and serve to distinguish it from other constitutions. To their study we may now turn.

Salient Features of the British Constitution.— (*a*) *It is an evolved and not an enacted Constitution.* From what has been said above it is clear that the feature which serves to distinguish the British Constitution most from other constitutions is its *evolved* character. While the constitutions of other countries have been enacted and adopted, each at a specific date and by a definite group of men, the British Constitution is the product of a slow and continuous process. As has been stated above, it is a growth and not a make. It is necessary to explain the precise sense in which this statement is to be understood, for growth can be predicated of every constitution in the world. The Constitution of the United States has also grown and developed ; had it not grown and developed, it would not have continued to meet the needs of the fast-changing American nation for nearly three centuries. Similar remarks can be made about the Soviet Constitution, the Constitution of the Third French Republic, etc. Every constitution is subject to growth for it is a living thing. When it is said that the British Constitution is a growth and not a make, the meaning is that it is impossible to assign the date on which it was struck off, and to name the persons who can be called its founding-fathers. It is the product of a long and continuous process of

* Zink : *Modern Governments*, page 19.

evolution which has been relatively free from violent commotions and definite breaches with the past. The only period when its continuous development was seriously interrupted was when Cromwell set up the republican form of government. It however did not last for more than a dozen years, and did not leave any permanent impression behind it.) There is no English revolution which can be compared to the French Revolution of 1789, or the Russian Revolution of 1917. The geographical isolation of Great Britain from the Continent and the genius of her people which disposes them to *reforms* rather than to *revolutions* and makes them peculiarly indifferent to the demands of logic or system in the art of government have been primarily responsible for the almost unbroken continuity of British constitutional development. It has been described by Professor Freeman in the following eloquent words: 'The continued national life of the people, notwithstanding foreign conquests and internal revolution, has remained unbroken for fourteen hundred years. At no moment has the tie between the present and the past been wholly rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory. Each step in our growth has been the natural consequence of some earlier step; each change in our Law and Constitution has been not the bringing in of anything wholly new, but the development of something that was already old. Our progress has in some ages been faster, in others slower; at some moments we have seemed to stand still, or even to go back; but the great march of political development has never been wholly stopped; it has never been permanently checked since the days when the coming on the Teutonic conquerors first began to change Britain in England.'*

One important result of the fact that the British Constitution was not built by any group of persons but is the product of a process of growth and adaptation to the environment is that it is a curious admixture or amalgam of diverse elements drawn from diverse sources. It consists of charters, statutes, judicial decisions, principles of common law and customs or precedents. This does not mean that it is just a collection of different elements. It is rather a 'living organism' which is constantly being changed by the actions and reactions of individuals and groups in response to changing

* *English Constitution*, page 10.

environments.) This explains why no attempt has ever been made to codify all its provisions; it is doubtful if the attempt will ever be made. As a notable French writer has remarked, 'The English have left different parts of their constitution just where the wave of history had deposited them; they have not attempted to bring them together, or to classify or complete them or to make a consistent and coherent whole. This scattered constitution gives no hold to sifters of texts and seekers after difficulties. It need not fear critics anxious to point out an omission or theorists ready to denounce an antinomy. By this means only can you preserve the happy incoherences, the useful incongruities, the protecting contradictions which have such good reasons for existing in institutions; *viz.*, that they exist in the nature of things, and which while they allow free play to social forces, never allow any one of those forces room to work out its allotted line, or to shake the foundations and walls of the whole fabric.'*

(*b*) *It is an Unwritten Constitution.*— Till lately, it was customary to distinguish between written and unwritten constitutions and cite the British Constitution as the best example of the latter. If we accept this classification of constitutions as sound, there is no doubt that the British Constitution must be regarded as *unwritten.* It is impossible to produce a copy of the British Constitution comparable to the Constitution of the U. S. A. or the U. S. S. R., each of which can be read in about half-an-hour's time. The reasons for this phenomenon have been already stated. The British Constitution has been the product of a slow and continuous process of growth whose course has been guided perhaps more by chance than by conscious design. No one consciously designed the organisation of the British Parliament into two houses, and no one prepared a blueprint of the cabinet system before it began functioning. A fortuitous combination of circumstances was responsible for the emergence of the cabinet system. It is impossible to collect together in one document all the constituent elements of the British Constitution. To say nothing of the conventions or customs of the constitution which regulate vital parts of it and which cannot from their very nature be reduced to writing, even the written laws of the constitution lie so much scattered up and down the statutes that they cannot be easily brought together in a single document. This difficulty is heightened

* Boutmy, quoted by Marriot, *English Political Institutions* : pages 28-9.

by the fact that a part of the laws of the constitution consists of judicial decisions and principles of common law. Again, the unwritten part of the British constitutional practices is much larger than the written part. There is thus very great justification for characterising the British Constitution as *unwritten*.

It is however easy for us to question the soundness of the distinction between written and unwritten constitutions. Strong condemns it as false. (There can be no constitution wholly written or wholly unwritten; every constitution which has been at work for some time is bound to contain both the elements.) The American Constitution, which is cited as a classical example of a written constitution, contains many unwritten conventions; *e. g.*, the locality rule, the seniority rule which determines the choice of chairmen of the various committees, and what is known as senatorial courtsey. (The British Constitution, on the other hand, contains many written laws) *e. g.*, the famous *Magna Carta* which was originally promulgated long before the British Parliament came into existence, the Act of Settlement of 1701, the Reform Acts of 1832 and 1867, the Representation of the People Acts of 1884, 1918, 1928, and 1948, and the Parliament Acts of 1911 and 1949. (The distinction between written and unwritten constitutions has little constitutional importance; it may better be abandoned.) What might have been sought to be conveyed by characterising the British Constitution as unwritten can be better connoted by describing it as an *evolved* system.

(*c*) *It is a highly Flexible Constitution.*— Closely connected with the *evolved* character of the British Constitution and more important than its unwritten nature is its high degree of *flexibility*. 'Not being set out or declared in any sacrosanct document nor hedged in by some special procedure of amendment, it can be changed or modified in any or every particular by the ordinary process of legislation. It can be reformed in any part by an ordinary act of Parliament assented to in the ordinary way.'* In these few but well chosen words Dr. Chrimes has explained the flexible nature of the British Constitution. It is formally and technically flexible because it draws no distinction between constituent and ordinary law-making authority; the British Parliament can alter or amend any part of the Constitution in the ordinary way; no special procedure and no

* Chrimes: *English Constitutional History*, page 9.

special majority is needed for amending it. The slow and gradual way in which power passed from the hands of absolute monarchs to Parliament and from Parliament to the Cabinet illustrates its great flexibility. It is also illustrated by the ease with which Parliament extended its own life till the duration of World War I and of World War II just to avoid the turmoil of a general election at a critical period. The Americans had to divert their attention and energies twice to the presidential election during World War II. The way in which the British Empire of the days of Disraeli and Joseph Chamberlain has been transformed into the present Commonwealth of Nations without even the word British prefixed to it also demonstrates the flexibility of the Constitution.

The British Constitution is flexible because it is 'a living organism' in a condition of perpetual growth and change. Just as an organism regulates its life itself, adjusting and adapting itself to the environment by an inner process, similarly the British Constitution has adjusted itself from time to time to meet the changing requirements. No part of it, not even so fundamental a document as the Bill of Rights or the Act of Settlement is immune from change, if change is demanded by circumstances. What makes the Constitution *flexible* is the fact that the needful changes come gradually, peacefully, and with a high degree of common consent. As Professor Mathiot observes: 'Behind the facade of apparently unaltered historic political institutions and traditional procedures there is an imperceptible process of change. The changes are not at all spectacular or even easy to detect, being merely slight adaptations such as are to be expected in a process of continuous evolution not governed by any *a priori* ideas.'* As has been pointed out earlier, the origin of Parliament was not due to any conscious design; the institution developed to meet certain needs; it has acquired its essential characteristics only gradually and by usage. Similar remarks apply to the growth of the cabinet system. Changes in the working of these two institutions are sometimes brought about by legislation and sometimes by usage. The relationship between the two Houses of Parliament was fundamentally altered by the Parliament Act of 1911. When in 1923 King George V asked Mr. Baldwin to form the government in preference to Lord Curzon, he set the precedent

* Mathiot: *The British Political System*, page 33.

which has developed into almost a rule that the Prime Minister should belong to the Hose of Commons. Similarly, custom has decreed that the monarch shall not refuse the request for a dissolution made by a Prime Minister. But it is conceivable that circumstances might develop which might make it necessary for the monarch to refuse such a request in the interest of the public good.

Prof. Neumann explains the flexibility of the British Constitution in terms of the British national character. He says that there is no supreme law of the land regulating the process of constitutional change. Such changes are brought about peacefully and with common consent. The British people are agreed that there exists a general and loosely defined body of rules and procedures which ought to be observed, but not being 'devoted to theoretical perspicacity, they find it quite superfluous to inquire into the precise nature and definition of those rules.' They are willing to leave the details to temporary solutions.

One more point deserves notice in connection with the 'flexibility' of the British Constitution. Since the process of constitutional amendment is formally simple— the British Parliament can change any and every part of it in the ordinary way—, it is generally presumed that it must be very easy. Such however is not the case; it is not an easy affair to introduce constitutional changes in the British system. It is now generally accepted that Parliament would not make any significant and important constitutional change unless the electorate has been given a chance to express its views upon it. Parliament passed the Parliament Act of 1911 only after the verdict of the electorate on the issue of reducing the powers of the House of Lords had been obtained in a general election. The Labour Government of Mr. Attlee could pass the Independence of India Act of 1947 because the matter had been referred to the people in the preceding general election as a part of the general policy of the Labour party. It has been demanded that the issue of Great Britain joining the European Common Market should be referred to the electorate. Sometimes constitutional changes are made if both the Government and the Opposition are agreed on them; the Statute of Westminster of 1931 was passed in this way. The House of Lords has not been reformed yet, because all the parties are not agreed among themselves as to the lines on which the reform should be effected. Requirements

of this type confer upon the British Constitution a certain degree of rigidity in the ordinary sense of the term. Because of the fact that a constitution technically rigid may be easy to amend, and another technically flexible may be difficult to change, the distinction between 'rigid' and 'flexible' constitutions does not possess great significance. No constitution can be very rigid; that would make it difficult for the constitution to adapt itself to the changing needs of the people, and thereby invite revolution. All constitutions are more or less flexible; they differ in the methods by which changes are brought about.

(*d*) *Unrestrained Legal Supremacy of Parliament* is another salient feature of the British Constitution. If Separation of Powers is regarded as the basic principle of the American Constitution, unrestrained legal supremacy of Parliament can be described as the basic principle of the British. This phrase admits of two different interpretations both of which hold good in different contexts. The British people are generally fond of describing their Parliament as *sovereign*; undoubtedly, the Queen-in-Parliament constitutes the sovereign authority in Great Britain, and this in two ways. First: there is no authority higher than and above the Queen-in-Parliament which can sit in judgment over its acts and question their validity. No mundane authority sets limits to the legal competence of Parliament; in the words of Sir Edward Coke its power and jurisdiction 'is transcendent both for causes and persons'. It has the power to alter, amend or repeal any part of the British Constitution in any manner it likes; its constituent authority is not hedged in by any special procedure or by any higher and sacrosanct law as that of the American Congress is limited by the American Constitution and the process of amendment it lays down. In the second place, its legislative power is equally unlimited. It can, for example, pass a law restricting office-holding only to women, suppress all newspapers, and make Buddhism the religion of the state. It can legally override any decision of any court of law and declare an established convention of the constitution illegal. It can even reverse its own past decisions; it is not bound by them. De Lolme has expressed this idea beautifully in his oft-quoted statement: 'Parliament can do anything except changing a man into a woman and a woman into a man.' In this connection it is interesting to note that there is nothing like Judicial Review of Acts passed by Parliament in Great

Britain; no British court has the power to refuse to enforce or to declare unconstitutional any law enacted by it however outrageous it may appear to be. The legislative competence of the British Parliament is absolute and unlimited. No other legislature in the world with the possible exception of the Parliament of New Zealand enjoys such an absolute power.

While the legal omnipotence of the British Parliament is incontestable— it is nonsensical to describe it as a fiction as is done in some quarters— it must be remembered that in actual practice it is subject to powerful moral and practical restraints. Though, formally speaking, Parliament can alter, amend or repeal any part of the Constitution as it likes, it would not introduce any far-reaching changes in it until either the electorate has given its verdict in its favour or the principal parties are agreed to it. Again, though Parliament has the formal power of abolishing trial by jury and suppressing freedom of speech and association, it would never commit any such foolish act because it knows that public opinion would not tolerate it. Though no court of law has the power to pronounce any Act of Parliament unconstitutional, public opinion would not hesitate to condemn any act as un-British which means the same thing as unconstitutional, if it runs counter to its sense of justice and fairplay. Summing up, we can say that though the British Parliament is not subject to any formal or legal restrictions in its legislative and constituent activities, it actually operates under more or less powerful restraints imposed by public opinion, moral considerations, international considerations, etc.

In the next place, the British Parliament can be regarded as sovereign because theoretically it is the supreme organ of state power; it has the last word in everything. The government or cabinet is ultimately responsible to it, and can do nothing contrary to its wish. It cannot raise a penny by way of taxation or borrowing or spend a farthing on any object without the previous consent of Parliament.) The Prime Minister and his colleagues hold office subject to the pleasure of Parliament; a displeased or censorious House of Commons has the power to turn them out of office. Because the government carries on its activities subject to the supervision and control of Parliament, the British system is sometimes designated as *parliamentary*. This designation shows the central and

vital role played by Parliament in government. But here again, as we shall see in another context, the supremacy of Parliament is legal or formal only; it exists more in text-books than in practice. In actual practice, instead of being the master of the cabinet, Parliament has become subservient to it. What they have in the United Kingdom is cabinet government and not parliamentary government.

(e) *The British Constitution is full of Paradoxes.*— Neither its flexibility nor the unrestrained legal supremacy of its Parliament constitutes so distinctive and unique a feature of the British Constitution as the presence of glaring paradoxes in it. The constitution of a totalitarian state like Nazi Germany, Fascist Italy and Soviet Russia may be as flexible as that of Great Britain; the parliaments of some state, *e. g.*, New Zealand, may enjoy formal and legal supremacy; but there is hardly any other state besides England whose constitution is so full of paradoxes. There is a greater divergence between the theory and practice of government in Great Britain than elsewhere.* A writer has wittily remarked that in Great Britain nothing is what seems to be, or seems to be what it is. A picture of the government as it is in its actual working at any time,— say, at the present time— would be very much different from what it would be if it were to be constructed on the basis of its written record and the forms and language used in describing its activities. There is a curious opposition between the actual and formal elements in the British Constitution. If one were to judge by the language in which the Acts of the British Parliament are declared to be enacted, one would conclude that the British people were living under a despotic monarchy. It is the Queen (or the King) who enacts laws with the consent and advice of the lords of the realm and the commons. All officers of the army, the navy and the air force; the post-office; the courts; the civil service, etc., are appointed in the name of the Queen; the whole Government is the Queen's government; even the Opposition in Parliament is Her Majesty's Opposition. The phraseology of the official documents would not reveal the presence of popular government in the country. Again, as has been pointed out above, in theory Parliament is supreme; it makes and

* There is a good deal of divergence between theory and practice in the Soviet Union also; but it is of a different character and springs from different causes. There is no sameness betweet Great Britain and the Soviet Union in this respect.

unmakes ministries, and has complete control over the legislative and financial activities of the Government ; in actual practice, the initiative and control over legislation and finance have passed from it into the hands of the Cabinet.* Once again, in theory it is the Queen who selects and appoints her Ministers— they are described as Her Majesty's servants— while everybody knows that they are the choice of the Prime Minister and are public servants. The absence of anything resembling Fundamental Rights in the British Constitution might lead some people to conclude that there was little of civil liberty in Great Britain ; as a matter of fact the British people enjoy a greater degree of it than people in most other countries. Finally, we may note the paradoxical fact that as democracy has spread in the country, the love and respect of the Britishers for their monarchs has increased and the powers of the Crown multiplied. While monarchies have tumbled in many countries after the First World War, the British Monarchy has established itself in the esteem and affection of the people. Monarchy is more firmly rooted in Great Britain today than in the past when the Kings ruled despotically and propounded the theory of the Divine Right of Kings.

The cause of the divergence between the theory and practice of government, or the *unreality* of the constitution as it has been termed by some writers, lies partly in the way the Constitution has developed and partly in the habits and temperament of the people. At one stage in her constitutional development Great Britain was a despotic monarchy ; she developed ceremonies and forms of expression characteristic of the system. As the transfer of power from the absolute monarch to the people was slow and gradual and not sudden and cataclysmic, the structural elements of the system and theit formal powers were allowed to remain mostly unchanged, but their balance and adjustment were altered. The Queen (or King) still retains the symbol of power, though she has completely lost the substance of it. Had there been a bloody revolution in the country like the one they had in France and in Russia, the British people might have been compelled to wipe the slate clean of the past. Such however was not the case ; they were content with providing for immediate necessities and were not called upon to abolish the old

* It is a curious disregard of facts which is responsible for the application of the term 'parliamentary government' to it ; in view of the dominating position of the Cabinet, it ought to be called Cabinet Government.

forms and structure. The result is that the British Constitution is encumbered with survivals from the past which have no relation to the actualities; there has come into existence a curious divergence between the theory and practice of the constitution.*

We saw above that the British people do not care for theoretical perspicacity and have not cared to define in any precise manner the principles on which their Constitution rests. Being a practical people they somehow muddle their way through. The result is that their principles and institutions contain some sort of inner contradictions giving rise to paradoxes. This is one of the reasons why foreign commentators on the British Constitution have sometimes misunderstood its nature. Montesquieu thought that it was based on the theory of Separation of Powers, and the Americans thought that they were building their constitution more or less on British lines.

(*f*) *Rule of Law.*— It remains to draw attention to another basic principle of the British Constitution; namely, the prevalence of the famous *Rule of Law*. Dicey places it alongside the supremacy or sovereignty of Parliament and cabinet responsibility as the pillars on which the Constitution rests. Englishmen prize it as the precious safeguard of their civil liberties. In countries like the United States of America and France personal liberties are made secure against infringement by the government by being included in the Constitution in the form of Fundamental Rights. In Great Britain this method is impracticable; she has no formal and written constitution, and therefore no high-sounding declaration of the fundamental rights of the citizens. The absence of any Bill of Rights in the British Constitution might seem to put the British citizens to great disadvantage as compared to the citizens who live under written constitutions guaranteeing fundamental rights. Such however is not the case; in actual practice they are far better off. They have the fullest freedom to do and say what they like, provided only that they do not break the law of the land. If a citizen's freedom is in any way infringed by the government, he can go to a court of law and seek remedy according to the law of the land. He cannot be deprived of

* In the Soviet Union there are no similar survivals; it cannot be said that old forms persist whose spirit has changed completely. There the divergence is produced by the counterweights exercised by the Communist party at crucial points; it would disappear the moment the Communist party sheds its monolithic and monopolistic character.

his personal liberties, or of his remedies, except by an Act of Parliament. In this connection it is well to remember that Great Britain is the traditional home of civil liberty. A good part of the present democratic world owes its concept of civil liberty to the tradition as it has developed in Great Britain in the course of many centuries. It is for the most part embodied in the common law of the country. As has been stated above, it is the observance of the 'Rule of Law' which enables them to enjoy it. But this 'Rule of Law' is nowhere defined or stated in any charter or statute. It is however recognised by Parliament, by the Crown, and also by the Courts as one of the basic principles of the British Constitution. It is implied in a long line of parliamentary measures and judicial decisions, and is firmly rooted in common law.

It is however no easy task to formulate it with any precision. Professor Dicey summed up its traditional meaning in the following three propositions: (i) 'That no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. (ii) That not only no man is above law but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunal. (iii) That with us the law of the constitution, the rules which in foreign countries naturally form part of the constitutional code, are not the source but the consequence of the rights of the individuals as defined and enforced by the courts.'*

The first proposition signifies that the government may not arrest and detain a person in custody, take away his property, or curtail his personal liberty except in accordance with the accepted principles of law as interpreted and applied by courts of law. Negatively speaking, it demands the absence of arbitrary powers in the hands of the government. It protects the individual against arbitrary action on the part of the executive. It thus secures the supremacy of law. We can easily understand the significance of this provision by contrasting the conditions as they prevail in Great Britain with what existed in India during the British regime when the executive of a province could arrest and detain a person in jail for

* Marriot: *English Political Institutions*, pages 35-36.

a long period under Regulation III of 1818 without getting him tried and convicted by a court of law. The government could arrest persons on suspicion and get them tried in camera and convicted through their own officials. Things were much worse in the Indian States. The provisions of law made under Preventive Detention are also a denial of this proposition.

The second proposition means that all persons, private citizens as well as government officials, are subject to the provisions of the ordinary law of the land and are amenable to the jurisdiction of the ordinary courts. It denies any privileged position to any person or class of persons on the basis of their birth or official position or social status. It excludes the existence of Administrative Law and Law Courts as they function in France and other countries having the system known as Administrative Jurisprudence.

The third proposition means that in Great Britain personal liberty is not guaranteed by constitutional law as is the case in the United States and in some other countries, but is secured by the way in which the courts apply the principles of common law. They consider themselves bound by the requirements of the Rule of Law.

The basic importance of the Rule of Law in the British system at the present time is brought out beautifully by Professor Mathiot in the following words :

'Respect for the constitution is founded upon the Rule of Law, which is also the basis of the entire judicial system of Great Britain. This is a concept which cannot be defined with precision, but is at the root of the whole idea of individual liberties. It implies much more than compliance with law on the part of the individual subject. It also imposes limitations on the power of the government and the administrative authorities, and embodies both the concept of the state as a law-making body and the liberal idea that the state may only exercise its power within certain limits prescribed by law. The Rule of Law is a comprehensive term which could be used to expound an abstract theory as well as in analysing how the government actually operates. If we examine the functioning of the machinery of government we shall see that the whole political system is genuinely inspired by the Rule of Law. This embraces many principles which, although somewhat imprecise, are nevertheless criteria of, or means of attaining, a system of government based on respect for the liberties of the individual. It postulates free elections and government in accordance with the will of the people, with the corollary that a government can be removed from power if it loses the support of the country. It also implies the equality of all citizens before the law, the recognition of certain civil liberties as absolutely fundamental, and a general atmosphere

of individual freedom, more easily perceived than analysed, which is quite incompatible with any kind of arbitrary rule and requires some measure of collaboration between the government and the opposition.'*

It is the view of some prominent writers that there has been some decline in reverence for the rule of law in England in recent times. During the First and the Second World War laws like the Defence of the Realm Act were passed empowering the executive to order the internment of any person in the interest of public security. But the amount of damage done to the principle of personal liberty in England by the steps taken during the war period was nothing as compared to what took place in our own country and even in a country like France. After the cessation of hostilities things returned to normal and personal liberties were almost as secure as before. Much more important than security legislation passed during the war period was the spate of repressive legislation placed on the statute book during the period between the two Wars. Mention may be made of the Emergency Powers Act of 1920; the Police Act of 1919; the Official Secrets Act of 1920; the Trade Disputes Act of 1927; the Civil Authorities (Special Powers) Acts of 1922 and 1923; the Incitement to Disaffection Act of 1934; and the Public Order Act of 1936. Some of these measures were adopted to meet the situation created by the subversive activities of the Communists and the Fascists and of those who wanted to disrupt the economic life of the community by organising a general strike, and others were meant to maintain the law and order situation in Ireland. During this period judge-made law whittled down the long established civil liberties. As a result of various judgments, the police were enabled to ban any political meeting in a street or public place, and to enter any private premises if they apprehended any breach of the peace. According to Professor Laski the cumulative effect of the post-war epoch in matters concerning public liberty bore 'an unhappy resemblance to the period between the end of the Napoleonic wars and the Reform Bill of 1832.' The Leftist-inclined critics of government measures vehemently criticised the use made by the ministers of the Emergency Powers Acts against striking gasmen in 1949 and against the dockers in 1950. The Public Order Act was used to forbid the traditional May day March and political processions. Under Section 5 of this Act nine ex-service youngmen were sentenced to six weeks' imprison-

* Mathiot; *The British Political System*, page 196.

ment for demonstrating before the American Embassy in London and shouting slogans. The Communists and their sympathisers make capital use of measures like these to show that personal liberties are on the decline in present-day Great Britain. In view of similar attacks made on the State and Union Governments in our own country by left-wing politicians for the measures taken by them to maintain law and order we may not attach much value to these charges. Those who thrive on agitation cannot be allowed to carry on their subversive activities in the name of personal liberty. We may therefore attach no value to the contention of the communists and their sympathisers that respect for the Rule of Law is on the wane in present-day England. More serious is the charge levelled by constitutional lawyers like E. C. S. Wade and Godfrey Phillips in their *Constitutional Law,* and by men like the late Lord Hewart in his *New Despotism.* Their contention is that the extensive use of delegated legislation and administrative justice in the country constitutes a serious threat to the personal liberty of English citizens; it has rendered Professor Dicey's interpretation of the Rule of Law rather obsolete. They want to put a broader and more comprehensive meaning on it so as to make it impossible for the government to act in an arbitrary manner. In order to understand the position the meanings of the two terms 'delegated legislation' and 'administrative justice' have to be explained.

The great increase in the scope of state activities during the last half a century or so has made it difficult for Parliament to find time to discuss the details of all the bills that come before it which not infrequently contain technical clauses. Not only are these clauses difficult to understand; also they frequently require modifications to meet changing situations. Therefore the practice has grown up of enacting skeleton legislation, the details of which are left to be filled in by the appropriate government department. Sometimes the bills provide for rules, orders and regulations to be made by the Department concerned. This practice of empowering government departments to supplement parliamentary legislation by issuing rules and regulations and filling in details is known as Delegated Legislation. Sometimes provision is made in the Act that rules and regulations made under it should be placed on the table of the House for a number of days before they come into force, but more often there is no such safeguard, and the regulations become effective without any scrutiny

on the part of the House. Since these rules and regulations have the force of law, the courts have to give effect to them. This places a great amount of discretionary power in the hands of the Government which can be used arbitrarily by it. The demand of Wade and Godfrey Phillips is that the Rule of Law should prevent the exercise of arbitrary power by the Government ; when discretionary power is granted to it, the manner in which it is to be exercised should be defined as far as practicable.

A still more potent threat to civil liberty in Great Britain comes from the practice of administrative justice. Parliament sometimes authorises ministers or tribunals appointed by them to hear and decide disputes between their departments and private citizens. It is extensively practised under laws pertaining to public health, social insurance, utility regulation, rent control, and town and country planning. An example may be given to make the idea clear. Suppose the Ministry of Health decides that a particular house owned by you is unfit for habitation and must be demolished or remodelled. It orders you to demolish or remodel it. You do not agree with the view. Your arguments against the decision of the Ministry would be heard not in a court of law but by an inspector deputed by the Ministry. If the decision goes against you and appears absurd to you, you cannot do much ; if the Ministry refuses to publish the reasons on which the decision was based, even a court of law cannot help you. There is thus ample room for arbitrary exercise of discretionary power under delegated legislation and administrative justice which runs counter to the Rule of Law. The danger to the Rule of Law is expressed by Lord Hewart in the following words :

'Get legislation passed in skeleton form ; fill up the gaps with their own rules, orders and regulations; make it difficult for Parliament to check the said rules, orders and regulations ; secure for them the force of statute ; make their own decision final; arrange that the fact of their decision shall be conclusive proof of its legality ; take power to modify the provisions of statutes ; and prevent and avoid any sort of appeal to a Court of Law.'*

The danger to personal liberty as outlined in the above passage may seem a little exaggerated, but is real enough. The only thing that can be said against it is that it does not take due note of the

* *The New Despotism*, page 21.

deep seated respect which the civil servants have for the tradition of the Rule of Law. The Government also took note of the forceful criticism of Lord Hewart and appointed a committee to examine and report on the matter. The report of the Committee suggested a number of safeguards for securing the sovereignty of Parliament and the supremacy of law. The Government has taken some action on the Report. It must however be admitted that planning and control over economic life involved in socialised industry pose a serious problem so far as the preservation of traditional public liberty is concerned. There is substantial truth in the assertion that economic planning involves curtailment of personal freedom to a large extent. Liberty and Equality cannot be harmonised in the long run ; if you want the one, you must be prepared for some sacrifice of the other.

(*g*) *Concentration of Power in the Cabinet*.— Though the British Constitution is based on the principle of unrestrained legal supremacy of Parliament— this is the reason why it is sometimes designated as *parliamentary*— its essence lies in temporarily entrusting great powers to a small body of ministers known as the Cabinet who are formally appointed by the Queen and can be dismissed by her. In actual practice the Cabinet is responsible to the electorate through the House of Commons which is periodically constituted on the basis of adult franchise. On account of the concentration of power and authority in the Cabinet and the pivotal position it occupies in the governmental structure, the British system is also described as Cabinet system. This title is more appropriate than the other name, parliamentary. The pivotal role played by the Cabinet in the British system would be explained at length in a subsequent chapter. Here our purpose is simply to draw attention to an essential feature of the Constitution.

(*h*) *Great Britain : a Unitary State*.— A few other features of the British Constitution may be noted before we conclude this topic. Great Britain is a *unitary* state. The totality of governmental powers is concentrated in one central government which holds undisputed sway throughout the whole of the country ; there is no statutory division of power between the central and a number of local or state governments as one finds in the United States and India. This centralisation of power dates from William the Conqueror who

made himself master of the whole country and gave it a strong central government. He however did not destroy the local bodies which had been functioning. The result has been that along with a highly centralised government governing the entire country from London there has existed in Great Britain a vigorous system of local self-government or municipal home rule in the counties and boroughs. Recent years have seen many inroads into the sphere of local autonomy ; the tradition of local authority however remains strong. There has been a fairly persistent demand that there should be a devolution of political authority ; that Scotland and Wales should be given local parliaments which might meet local needs more promptly and efficiently than the Parliament at London. The idea has not commended itself to the authorities at London

(*i*) *The British Constitution is a Mixed One.*—The British Constitution is technically known as *monarchic* in contradistinction to republican, because the Head of the State is a hereditary reigning monarch and not a president elected by the people for a limited period. In reality it is *mixed* constitution combining in an organic whole monarchic, oligarchic and democratic elements. The reigning monarch who sits on the throne for life and is usually styled by the British people as 'Our Sovereign Lord, the King (or Queen)' supplies the monarchic element. British monarchy is however constitutional. The qualifying word indicates that the monarch is not free to exercise the powers vested in him on his own initiative and at his free will ; he is bound to act according to law and on the advice tendered by his responsible ministers. The House of Lords represents the oligarchic element ; Professor Laski describes it as the 'fortress of wealth'. The House of Commons supplies the democratic element. Though the three elements are very finely balanced and adjusted in the whole, the democratic element is the most powerful. The British system can be very properly characterised as *democratic*, notwithstanding the presence of the predominantly hereditary House of Lords and the hereditary monarch. It is democratic because Her Majesty's Government is carried on in the name of the people and in accordance with the views of the majority of the people freely expressed by them at the general election. The government of the day is fully responsive to public opinion. There is great freedom of speech and press and association which is vital to democracy. Elections are free and fair ; no attempt is made to stifle opposition.

Guiding Principles of the British Constitution.— If we were asked to select from among the salient features of the British Constitution described in the preceding pages those we consider to be basic or most fundamental, we would unhesitatingly name (*i*) the pivotal position of the cabinet as the guiding and leading element; (*ii*) the supremacy of Parliament which is designed to exercise control over the government on behalf of the people and prevent it from acting arbitrarily and oppressively; and (*iii*) the Rule of Law which is the sheet anchor of the liberties of the people. The three combined together give the people strong and effective government and reasonable safeguards against arbitrariness. They ensure a truly democratic government to the people.

We may now proceed to describe the constituent elements of the British Constitution which is a curious mixture of diverse elements derived from diverse sources.

Constituent Elements of the British Constitution.— We saw above that the British Constitution differs from the constitutions of countries like the United States, India and the Soviet Union in being an evolved and not an enacted constitution. But so far as the material of which it consists is concerned, it greatly resembles them. The difference between them is not one of ingredients, but of their proportions. It would be conducive to clearness if we describe the various elements of which the evolved and unwritten constitution of Great Britain consists.

We may broadly divide them into two main classes: (*i*) the *laws* of the constitution, and (*ii*) the *conventions* or *customs* of the constitution. Every constitution which has been at work for some time is bound to contain both these elements; the American Constitution has its laws and conventions as the Indian and Soviet constitutions have theirs. The peculiarity of the British Constitution is that the proportion of the conventional element is far greater in it than in any other constitution in the world. Matters which are regulated by the laws of the constitution in other countries are determined by conventions in Great Britain. The fundamental difference between these two elements does not lie in the written character of the *laws* and the unwritten character of the *conventions*; some of the constitutional laws in Great Britain have not yet been reduced to black and white. It lies in the fact that while the former are recognised and enforced

by courts, the latter are not. Courts of law will *not* take note of and enforce a constitutional convention however important it may be, but will recognise and enforce a law of the constitution. If a constitutional convention somehow secures the recognition of courts, it becomes a law, though it may remain unwritten.

(*a*) *Laws of the Constitution.*— Taking up the *laws* of the constitution we may say that in Great Britain they may be distinguished into four different groups. In the first group we may place *historic documents* like the *Magna Carta*, the Petition of Rights and the Bill of Rights. They are regarded as historic because they represent land-marks in British constitutional history and embody solemn agreements arrived at between the monarch and his subjects at critical periods. Their importance lies in the fact that it was through them that the characteristic principles of British political system,— namely, the subjection of the monarch to law, and the possession by the subjects of certain rights which the monarch must respect— were established. Reference to them would be made in the next chapter dealing with the development of the British Constitution.

To the second group may be assigned *statutes* passed by Parliament from time to time. They constitute a large part of the British Constitution. There is scarcely any session that does not pass a statute modifying, adding to, or altering the basic law of the land. The Habeas Corpus Act of 1679, the Act of Settlement of 1701, the Reform Acts of 1832, 1867, and 1884, the Representation of the People Acts of 1918, 1928, and 1948, the Parliament Act of 1911, the various acts which reformed and systematised local bodies and the judicial organisation are obvious examples. Statutes establishing government departments and defining their powers also come within this group.

The third important group of laws of the constitution comprises *judicial decisions* and legal commentaries. As in the U. S. A., in Great Britain also the courts interpret and clarify law, and in so doing declare what the Constitution is. Some of the judicial decisions have established important rights of the people ; *e. g.*, the decision in the famous Bushell's case in 1670 established the independence of juries. It must however be borne in mind that judicial decisions have not played the same role in British constitutional development as they have done in the growth of the American Constitution. The

reason is that the British Courts do not possess the power of judicial review. As has been pointed out earlier, the British Parliament enjoys unrestrained legal supremacy; there is no higher human authority which can sit in judgment over its acts. The sphere in which the British courts contribute through their power of interpretation and clarification is that of common law.

The *principles of common law* constitute the fourth category or group comprsied within the laws of the constitution in the British system. They consist of a body of rules which have been hammered out throughout the ages by the king's justices; according to Neumann the rules of common law are a great body of court decisions and precedents. It would therefore seem that the difference between them and judicial decisions must be slight indeed; it is not easy to draw any hard and fast line of distinction between the two. We may roughly say that decisions of the judges involving interpretation of charters and parliamentary statutes may be regarded as belonging to the group of judicial decisions, whereas the principles on which the courts proceed in determining the relationship between the government and the citizens may be called rules of Common Law. The former are always written, the latter are usually not reduced to writing; they rest on usage. For example, the rule that courts of law are bound to give effect to parliamentary statutes is itself a principle of common law and is not embodied in any parliamentary statute. The whole of the law of royal prerogative, except in so far as modified by statute, is common law. Quite a large part of the rights and liberties enjoyed by the British citizen, e. g., freedom of speech, freedom of press, freedom of association, right to trial by jury, is secured to him by the principles of common law.

(*b*) *Conventions of the Constitution.*— Besides the four types of constitutional laws noted above— namely, historic documents, parliamentary statutes, judicial interpretations, and principles of common law— the British Constitution contains a non-legal element which is not to be found written anywhere, neither in the statute book nor in the great body of judicial decisions and commentaries. It consists of usages or customs which have developed in the course of centuries. This part, quite large and in a way even more important than the legal rules, is known as Conventions of the Constitution. Their importance can be gauged from the observation of Asquith that British

constitutional practices 'rest upon usage, upon custom, upon convention'. This involves no exaggeration; matters of the utmost importance are regulated by conventions in Great Britiain. The role played by the monarch in the political life of the nation is determined by conventions; the whole cabinet system rests upon conventions; and many of the functions of Parliment and even the relationship between the Monarch and members of the Commonwealth of Nations are governed by them. By the term 'constitutional conventions' we mean all those understandings, habits and practices, which, though outside the written law and nowhere recognised by it, regulate a large portion of the day-to-day relation and activities of even the most important public authorities. They determine the manner in which the legal framework of the constitution works; they are the means by which it is kept in touch and made to work in accordance with the changing social needs and political ideas of the people. It may be said that the conventions provide flesh and blood to the bony structure of the constitution; or to change the metaphor, they are the lubricant for the constitutional machine. It is chiefly by their means that the British constitution has been able to grow and adjust itself to the changing requirements of the times. Nevertheless, they are not recognised and enforced by law courts. In this respect they differ from the laws of the constitution. Since the conventions are constantly growing and changing in response to the needs of the society, it is not possible to make a complete list of them as existing in the British Constitution, but their nature and importance can be easily illustrated by enumerating the principal ones recognised and acted upon by the politicians and statesmen. The following are the important ones:—

1. Parliament must be convoked at least once a year. 2. A ministry which has lost the confidence of the House of Commons must resign unless it can secure a dissolution. 3. The Crown usually grants a dissolution on the advice of a ministry which has not recently received a dissolution. 4. If the verdict of the electorate goes against the ministry, it must resign in favour of the party which has secured a clear majority. 5. The Crown must call the leader of the majority party to form the government. 6. The Cabinet is collectively responsible to Parliament for the advice it gives to the Crown. 7. The Crown may not do anything except on the advice tendered by a minister responsible to Parliament. 8. The House of

Commons cannot consider any proposal for sending money levying or raising a tax except on the recommendation of the Crown.* 9. The King must give his assent to a Bill passed by Parliament. 10. The Speaker of the House of Commons must keep himself aloof from party politics. 11. The Speaker of the previous House of Commons is elected without contest from his constituency and to the Speakership so long as he desires. 12. Lay peers do not take part in the legal work of the House of Lords. 13. The Monarch acts on the advice of the Prime Minister of the Dominion concerned, and not on that of the British Prime Minister in matters pertaining to the Dominions. It would appear from the foregoing list that almost the entire cabinet system as it works in Great Britain rests upon constitutional conventions. It is well to remember in this connection that the cabinet system is the most fundamental and pivotal feature of the British constitutional machine without which it would not be what it is. Thus, even though they nowhere appear in statute books and form no part of the *law* of the land, written or unwritten, the conventions are as essential a part of the British Constitution as the charters, statutes, etc. No student of it can possibly hope to understand its spirit and working if he were to ignore them.

Though England is the classic home of conventions, it cannot be said that it is a peculiarity of the British Constitution to have them. As has been indicated earlier, there can be no constitution in the world which does not develop its own conventions with the passage of time. All that can be maintained is that customs and conventions play a much larger and more vital role in the working of the British constitutional machinery than elsewhere. The reason for it is to be found partly in the gradualness of the way in which the British system developed, and partly in the British national temperament which has enabled the people to retain traditional forms despite changes in the balance of power in the state. Most of the conventions came into being in the long struggle between the Crown and the people; they helped in the peaceful and gradual transfer of power from the King to the House of Commons.

Several questions arise about constitutional conventions. The following are the two important ones: How do they differ from

* This is standing order No. 66 of the House of Commons. The Crown in this context means the Cabinet. In other cases it usually signifies the reigning monarch. Of course, this ignores the distinction between King and Crown.

constitutional laws? What is their sanction? An attempt will be made to answer them in what follows.

With regard to the first question it may be said that the distinction between constitutional laws and constitutional conventions is not really fundamental; it exists for the technician but not for the masses for whom it does not matter much if a constitutional practice has the sanction of law behind it or is a convention merely. The former may draw a three-fold distinction between them. Firstly, he may point out that the laws have a greater sanctity; there is a greater reluctance to break them. Obedience to a law of the constitution is a fundamental duty; obedience to a convention is not recognised as equally fundamental. This is no doubt true, but the matter is largely psychological. A rule of law is obeyed not because of its form but because of its content. A convention may be as vital and fundamental as any law, and then it would be as difficult to violate the former as it would be to break the latter. It is not easy to conceive of a Ministry being defeated on the floor of the Commons on a vital issue and yet not resigning or appealing to the country; it is equally difficult to expect that the Queen would refuse assent to any Bill passed by Parliament. A violation of such a convention would be as shocking to public sentiment as that of a constitutional law. Less important conventions may be deviated from with more or less ease. In the second place, there is no formal method of determining whether a convention has been violated. The courts of law take note of breaches of laws but not of conventions. In other words, whereas a law of the constitution would be enforced by the courts, a convention would not. This is true, but in a majority of cases it may be explained on the ground that breaches of conventions are usually less obvious than the breaches of law and can be 'more easily clouded by a fog of misunderstanding.'* Lastly, laws are precisely formulated, while conventions are not. They grow out of practice, and it is nobody's business to give them proper shape and form. For example, the practice that a peer shall not be chosen as the prime minister has not yet received as clear and precise a formulation as the convention that the Queen may not do a public act except on the advice of a responsible minister. Some of the conventions, however, are very definite and precise.

* Jennings: *Cabinet Government.*

Coming to the question, why the conventions are so scrupulously followed, we may say that it admits of no fully satisfactory answer. Prof. Dicey, who was the first writer to use the name *convention* for all the understandings and usages by which a constitution is overlaid when it has been at work for some time, held that the most important conventions are obeyed because they are so bound up with the constitutional laws that their violation would mean a violation of the laws themselves. He illustrated his answer in the following way: If Parliament is not summoned at the proper time and the financial year is allowed to advance without the passing of the annual Army Act and the annual Appropriation Act, the disciplinary authority of the government over the army would cease and the whole machinery of government would run out of gear. Failure to observe the convention would thus mean a breach of the Constitution itself. There is force in the argument; the evil consequences arising out of the non-observance of constitutional conventions do prevent politicians from violating them. But this is not a complete answer. Not all conventions are similarly bound up with the due observance of the laws: the less important of them may be ignored without coming into conflict with the constitutional laws. For example, no law would be broken if a ministry defeated in the House of Commons refuses to resign. In the second place, there is nothing to prevent Parliament from changing the Constitution in such a manner as to avoid the annual appropriations and the annual army act. The budget may be made biennial or even triennial; and in that case the constitutional necessity of annual sessions of Parliament shall cease. This hypothetical case shows the unsatisfactory character of Dicey's answer. The answer given to this question by Lowell is more satisfactory. He says that conventions are observed because they constitutes a code of honour. 'They are, as it were, the rules of the game and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligations of this kind. Moreover, the overt fact that one class rules by the sufferance of the whole nation as trustees for the public, makes that class exceedingly careful not to violate the understandings on which the trust is held.'* In short, according to Lowell, the force of public opinion is the sanction behind the conventions of the constitution. The public expects that Parliament would be

* Lowell: *The Government of England*, Vol. 1, pages 12-13.

convened every year and that the government defeated in the House of Commons over a vital issue would resign. If these things do not happen, there is bound to be great resentment in the public; and it is the fear of a censorious and displeased public which makes the different parties observe the conventions.

Like the laws of the constitution the conventions also ultimately rest on acquiescence. So long as either a law or a convention is rendered necessary by current ideas and theory, it would be observed; the moment it becomes discordant with social necessities and arouses social opposition, it shall be discarded. This also shows that the distinction between the laws and the conventions of the constitution is not of fundamental importance.

Chapter II

EVOLUTION OF THE BRITISH CONSTITUTION

Introductory.— Several of the political institutions we find in Great Britain to-day strike their roots so deep into the past that their forms and functions cannot be properly understood without some knowledge of their history. A little peep into British history as an introduction to our main study is thus indispensable.

The Anglo-Saxon Period.— Prior to the Saxon invasion England was inhabited by Celtic tribes and was a part of the Roman Empire. The withdrawal of the Romans left the people defenceless and weak against the Danes, the Angles, and the Saxons who arrived in large numbers in the later half of the fifth century, drove the Celts westwards and established seven districts or kingdoms each with its own chief. In course of time one of the seven chiefs gained supremacy over the rest and England thus got a monarch in the person of Alfred the Great (849-901). Monarchy or kingship is therefore an Anglo-Saxon product. But kingship never became strong in Saxon hands, and England remained a loose aggregation of tribal commonwealths. It was not before the advent of William the Conqueror that the country got a strong central government. William showed great tact, resourcefulness and foresight in making himself the master of the land in a measure never attained by any Saxon monarch. The Anglo-Saxons gave to England another institution also. They developed a system of local self-government which attained a fair degree of uniformity throughout the entire kingdom and thus created a bond of national unity. Each village had its own local government. A number of villages were formed into districts called hundreds, each of which had its own local assembly. The hundreds were formed into shires,— the progenitor of the modern county. In their villages, hundreds and shires the English people learnt their first lesson in self-government and developed the method of choosing their representatives. The local institutions founded by the Saxons were much stronger than the kingship established by them.

The Norman Period.— The Norman period inaugurated by the conquest of England by William of Normandy in 1066 constitutes an important epoch in the development of British political institu-

tions. As has been stated above, William was successful in establishing a strong central government. But he also wanted to win the goodwill of the people, and therefore allowed them to retain their old customs, institutions and laws, changing them only so far as was necessary to consolidate his royal power. There thus came about a fusion of Saxon and Norman political ideals to the great advantage of England. The country developed a strong central government and also had the advantage of retaining virile local bodies, even though William and his successors managed to bring them under their control by various measures.

Mention should also be made of two new institutions which the Norman kings developed. Out of them arose the British Parliament, the Privy Council, the Exchequer and the courts of justice in course of time. They were the *Magnum Concilium* or the Great Council, and the *Curia Regis* or the Little Council. The *Magnum Concilium* was nothing but the old Witan of the Saxon kings under a new name. It was composed of bishops, officers of the royal household, tenants-in-chief, and such other high officials as the king chose to summon to advise him in reviewing the work of administration, deciding policies of the state, making laws and administering justice. It contained no elective element, and met three or four times a year at the call of the king. Though its functions were similar to those of the Witan, it was decidedly less powerful and influential than its predecessor, partly because the authority of the king had increased and partly because its members were his vassals. Nevertheless, it was an advisory body consulted by the king in the making of laws and levying taxes. It also acted as his court of justice. It is hardly necessary to say that the king was not bound to accept its advice.

The Great Council did not meet often ; and when it did meet, it did not sit for more than a few days at a time. But there was business to be attended to all the while, and therefore arose the *Curia Regis* or the Small Council. It consisted of a small body of officials of the king— his chamberlain, chancellor, steward, etc.— who were always with him and accompanied him wherever he went. Being always available, the king consulted them whenever necessary. There was no separation of the jurisdictions of the two bodies. The king decided whether to call a meeting of the Great Council or to consult the Small according to his convenience and wishes. To what extent

did he feel bound to abide by the views of the two Councils is not known. The fact, however, that the Norman kings did follow the practice of calling together the leading men of the realm and seeking their advice on important matters of the state was significant. This habit hardened into a usage and later on became a constitutional principle. 'Out of the plenary sessions of the Great Council the British Parliament arose; out of the Curia grew the Privy Council, the exchequer, and the high courts of justice. So the frame of government in twentieth century England owes much to this ancient council with its big and little sessions.'*

The Evolution of Privy Council, etc.— The story of the differentiation of the Curia into the Privy Council, the exchequer and the courts of justice need not detain us long. It should be remembered that in the days of William the Conqueror the Curia performed functions of different kinds. It concerned itself with administrative and judicial matters without making any distinction between the two. As the amount of work transacted by it grew, the tendency to bifurcate it into two sections developed. Gradually its administrative work was separated from the judicial, and the Council split up into two sections. One section continued to function as the royal council and became the Privy Council. The other section became the parent of the exchequer and the courts of justice. It should be remembered that this division or separation took place gradually and without conscious designing and planning.

The Evolution of Parliament.— The story of the British Parliament growing out of the Great Council is more interesting and calls for a more detailed account. It should be recalled that originally only the leading men of the realm, *e. g.*, the great land-owners, used to be summoned to the meetings of the Great Council. But once King John stood in need of money and wanted to levy taxes upon all landed estates of whatever size. He desired that the new taxes should be approved by a bigger and more widely representative body, and accordingly directed his sheriffs to send four knights from every county to attend the session of the Great Council at Oxford. This is the origin of its enlarged membership. It also contains the germ of the well-known doctrine: 'No taxation without representation'. The motive of the king in extending invitation to the smaller persons

* Munro: *Governments of Europe*, page 36.

was not to propound any new doctrine but merely to get money in the easiest way. Nevertheless, he sowed the seed which later on grew into the famous dictum.

The next step in the process was the signing of the *Magna Carta* or the Great Charter. It made the organisation of the Great Council more definite and also increased its powers. By his follies and acts of high-handedness King John had alienated the sympathies of his subjects, and the barons and the clergy threatened revolt unless he agreed to their demands. Finding no way out he yielded and signed the *Magna Carta* on June 15, 1215. By its terms he agreed not to impose certain specified taxes without the approval of the Council and to summon to its meetings all the great barons individually and the knights of the shires by writs through the sheriffs. Even though the Great Charter did not secure any rights and privileges for the humbler folk and contained no provision for anything in the nature of representative government but was strongly baronial in tone, it is rightly regarded as a great landmark in British constitutional development. It established the principle that the king must consult the Council in regard to certain affairs as a matter of law and not merely as a matter of choice. It also set up a sort of baronial guard over the king to see that he lived up to his agreement. In this way it secured that the kings were to govern the country according to established principles and not according to their caprices ; it laid the foundations of constitutional government. This is certainly a great achievement. It should also be remembered that the rights and liberties granted to the barons and the clergy by the Charter were later on extended to other classes of people also. It can thus be readily understood why the Britishers look upon the Charter as the palladium of their liberties. It was confirmed several times by the succeeding kings and Parliaments.

The next step in the evolution of Parliament was the inclusion of representatives from the towns or boroughs in the Great Council, and thus to put it on a representative basis. It happened in the following way. Another king, Henry III, was in need of money. Following the precedent set by King John, he convened a meeting of the Council. Unable to arrive at any agreement over the new taxes proposed, he and the barons fell out among themselves. In the armed conflict that followed, the king was defeated, and the leader of

the barons, Simon de Montford, became the virtual dictator of the state. He too wanted money, and called a meeting of the twentyone towns which were friendly to him. Once again, the guiding motive was not allegiance to the democratic principle of popular representation but the desire to secure support from quarters believed to be friendly. The practice of inviting town representatives was discontinued after the death of Montford. It was not before 1295 that the practice was revived. Edward I was also in need of money for the conduct of wars in which he was engaged and therefore convened in 1295 what has come to be known as the Model Parliament. He invited the barons, the clergymen, the knights and representatives of the townsmen. The meeting was large and representative; it consisted of more than 400 persons and included 172 representatives of the cities and boroughs, and therefore was a parliament in the true and modern sense. The barons, the clergy, the knights, and the citizens listened to the King's request as one body but voted the money he wanted separately. After listening to the King's plea each group retired to deliberate upon it, and coming back into the presence of the King voted the money separately. Had this arrangement into three estates become permanent, Great Britain would have had a legislature consisting of three houses. But under pressure of common interests the barons and higher clergy combined together into one body and formed the nucleus of the House of Lords; the knights of the shires and the townsmen drew together into another body and formed the basis of the House of Commons. The bicameral organisation of the British Parliament is thus the result of chance and not of conscious design. It became an accepted fact within the next hundred years, and from England travelled to distant corners of the world, our own country included.

It thus took more than three hundred years for the Magnum Concilium of the first Norman kings to grow into the British Parliament with its two houses. It must also be remembered that Parliament in the fourteenth century was something quite different from the body which bears that name to-day. It was not a law-making body then. The laws were made by the king with the assent of his councillors. The Commoners merely presented their petitions to the king. The Commoners had no authority or influence in financial matters; their role was limited to giving assent to the taxes proposed by the king. An invitation to attend Parliament was

considered as a burden to be avoided, if possible, and not as an honour to be eagerly sought, particularly in the case of the townsmen. Membership of the House of Commons in medieval England did not bring either profit or authority.

Gradually, however, the members of the House of Commons began to realise the potentialities of the situation. They saw that the king could not do without their support; he needed parliamentary grants. They proceeded to make full use of this fact to gain authority in the domain of finance. In 1407, Henry IV gave the Commons an assurance that all money grants would, in future, be considered and approved by the House of Commons before being submitted to the House of Lords. In this way the Commons acquired the power of the purse. The right of submitting petitions was also made the basis of actual share in the process of law-making. First of all, individual petitions were merged into a collective petition to be presented on behalf of the House as a whole. The petition came to be known as an "address to the throne". At a later stage this request was transformed into the right to participate in law-making by giving their address the form of law. Whereas in the fourteenth century laws were made by the King at the *request* of the Commons (and with the assent of the Lords), in the following century they came to be made by the King *by and with* the advice of the Commons and the Lords. The Commons acquired this power through its right of granting supplies to the king who needed money to run the government and fight wars.

It must not be imagined that with the acquisition of the law-making and financial powers in the sixteenth century Parliament had become all powerful. Authority still lay with the kings who were the real executive and possessed power. They were in a position to secure from the Commons whatever they wanted and coerce it into obedience by threats of violence. Queen Elizabeth I is reported to have sent to prison two members of the House of Commons for advocating measures she did not like. A recalcitrant House could be dissolved whenever the monarch wanted; an obliging House could be kept for several years, for there were no laws regulating elections. The list of boroughs invited to send representatives was generally determined to suit royal interests. In spite of the powers Parliament had been able to acquire during the preceding centuries the Tudor monarchs were

in a position to rule in a more or less autocratic manner during the sixteenth century. They were, however, tactful enough to hide their autocracy by consulting Parliament. Their successors, the Stuart kings, were not so statesmanlike; and the first of them, James I, precipitated a conflict with Parliament by insisting on his right to rule by divine right. Fortunately, the conflict did not result in an open rupture during the reign. His son and successor, Charles I, was less fortunate and more tactless. After having ruled without any parliament for eleven years he provoked an armed conflict with his opponents which resulted in his execution in 1649. After his death a republic was proclaimed in the country, and kingship and the House of Lords were abolished. Oliver Cromwell was named the Protector, but he too found it difficult to deal with the House of Commons. After a short experiment with a Republican constitution lasting for little over a decade the country reverted to monarchy in 1660 with Charles II, another Stuart, on the throne. He managed to pull on with Parliament, but his brother James II, who succeeded him was of a different temperament and invited trouble by trying to set aside a law Parliament had made. Finding himself without any supporter, James II fled to France, and Parliament invited William, Prince of Orange, and his wife, Mary, the elder daughter of James, to occupy the empty throne. As a result of this bloodless revolution William and Mary became the joint sovereigns in 1689.

In order to consolidate the gains of the Revolution and avoid recurrence of friction, Parliament adopted in 1689 one of the most significant documents in English constitutional history called the Bill of Rights. This document summed up the results of the Bloodless Revolution and of the entire constitutional development till then, and put them in an unmistakable form. It declared that the king could not suspend any law, levy any tax, and keep a standing army during peace-time without parliamentary approval. It affirmed the right of the members of Parliament to freedom of speech and discussion, the right of the citizens to petition the king, and the right of Protestant subjects to bear arms for their defence. It also laid down that Parliaments ought to be held frequently and that parliamentary elections should be free. One might say that in virtue of the Bill of Rights the divine right of kings was dead and British monarchy became limited. The basic principles of British constitu-

tion, namely, the rule of law and the legal supremacy of parliament became firmly established ; their validity was not to be called in question any time in future.

Constitutional Development after 1689.— The constitutional development that took place in Great Britain after 1689 is of a character different from that which preceded it ; it relates more to details than to fundamentals. By that year the outlines of the constitution were practically complete ; what was needed and what was accomplished in the period that followed was the filling in of necessary details. It is the growth of the cabinet system and the development of political parties which completed the political structure and gave it flesh and muscles. Though the two phenomena are inter-connected, the development of the one reacting upon that of the other, in what follows we will confine ourselves to the rise of the Cabinet, and shall deal with the growth of political parties in another context.

The events of 1688–89 had put the mastery of Parliament over the King beyond the shadow of doubt and the possibility of challenge ; they had brought the Sovereign into political dependence on the House of Commons. But there was one great lacuna ; *there was no machinery by which Parliament could exercise effective control over the king in the day-to-day affairs.* The king still possessed large prerogatives and exercised great control over public acts and policies ; he had not become the reigning monarch he is to-day. Not until Parliament was in a position to bring the exercise of royal prerogative under its control and reduce the power of the king in the administration of the affairs of the State, could its supremacy be complete. It was the growth of the Cabinet as the pivot of the whole machinery of government which led to the realisation of this goal.

The process was neither simple nor guided by conscious design ; it was more casual and accidental than necessary, more due to the force of circumstances than to any growth of the spirit of liberty. It had two aspects : (*i*) diminution of the powers of the king, and (*ii*) growth of the powers of the Cabinet and its responsibility to the House of Commons. A few words about each of them are necessary.

(*i*) *Diminution of the powers of the King.*— It should be remem-

bered that William of Orange and his wife Mary, and after them Queen Anne, were not mere titular heads of the state like their twentieth-century successors; they enjoyed vast powers and exercised great control over the state policies and administration, notwithstanding the Bill of Rights and the Act of Settlement. But the early Georges who followed them were to all intents and purposes foreigners. Knowing little English, and perhaps caring less for British affairs, they allowed all the powers their predecessors had exercised to slip from their hands and fall into those of their ministers. In other words, circumstances combined to reduce them to virtually *reigning* monarchs. Their successors tried hard to regain the lost powers but in vain. It was, however, not till the days of Queen Victoria that British Monarchy became really constitutional and all real power was transferred to the Cabinet.

(*ii*) *Development of the Cabinet* — Just as it was through several stages spread over several centuries that the present Parliament arose out of the Great Council of Norman kings and acquired supremacy over the executive, similarly the present Cabinet developed out of the Privy Council through several stages and in the course of several centuries. The steps by which it approached its present position may be summarised thus:

1. The Cabinet at first appeared in the shape of a small, informal, irregular group selected at pleasure by the King from the larger body of the Privy Councillors, privately consulted by him, but with no power to adopt any resolutions on the state policy or perform any act of government without the assent of the Privy Council. It was not known as the Cabinet then. This was prior to the reign of Charles II. The practice was rendered necessary by the large size of the Privy Council.

2. The second stage was reached in the reign of Charles II. He found the Privy Council 'too large for despatch and secrecy', and for advice resorted to a small group of leading ministers. This group came to be known as the *Cobal*. It, however, did not acquire any recognised status and did not displace the Privy Council from its position of being the only authoritative body of royal advisers. For a time the practice had to be given up because of the distrust and jealousy it awoke in the minds of some persons. Charles II had to

govern with the help of a reconstructed Privy Council towards the close of his reign.

3. The next stage in the development of the Cabinet system was reached in the reign of William III, to be more definite, in 1695. William discovered that work could not go on smoothly so long as ministers were drawn from the ranks of both the groups which had emerged in the House of Commons. He therefore started the practice of entrusting all the great offices of the State to persons drawn *exclusively* from the party with a *majority in the House.* His ministry thus approached the modern type. The Privy Council was pushed in the background, and the Cabinet became the sole supreme consultative body and the real executive authority in the state. But still there was no Prime Minster who could act as the political chief of the Cabinet. The king continued to preside over the meetings of his ministers who were *his* servants and helped him carry out his wishes.

4. The fourth stage was reached in the reign of the early Georges who ceased to preside over the meetings of their Cabinets because of their ignorance of English and were content to leave the administration of state affairs to their ministers. Sir Robert Walpole is sometimes described as the first Prime Minister in the modern sense and as having administered the state affairs according to his own political ideas and convictions. By resigning his office in 1742 on an adverse vote in the House of Commons he set the precedent which became the basis of one of the cardinal principles of parliamentary government. During the preceding period responsibility to the House of Commons was enforced through the clumsy method of impeachment. The step taken by Walpole rendered it superfluous. But he was too much dependent upon royal support to be called Prime Minister in the real sense of the term. It was not before the appointment of Sir Robert Peel in 1841 that the independence of the Prime Minister of royal influence was established.

5. The ascendancy of the Prime Minister and other features of the cabinet system took shape and became part of the theory of the British Constitution in the course of the last hundred years.

It will thus be seen that the idea of the Cabinet as necessarily consisting of members of the legislature, belonging to the political party possessing a majority in the House of Commons, prosecuting a concerted policy, working on the principle of individual and

collective responsibility to the House of Commons, and acknowledging common subordination to one political leader, is the product of a long evolutionary process extending over several centuries. It may also be added that for a long time it lived and functioned simply by understanding, and without any line of written law. Recently, however, it has been recognised by constitutional law.

Recent Constitutional Trends.— Besides the rise of the cabinet system and the growth of political parties, another notable change took place in the British political system in the course of the hundred years preceding the enactment of the Representation of the People Act of 1928. This is its *progressive democratisation.* This democratisation has been brought about by the progressive enlargement of the electorate. It began with the Reform Act of 1832, and was carried a step further by the Reform Act of 1884. The Representation of the People Acts of 1918 and 1928 completed it. To-day every adult citizen of Great Britain, irrespective of considerations of sex, creed, colour of the skin, educational and property qualifications is entitled to get his or her name entered on the electoral roll provided he or she fulfils conditions in regard to age and residence.

Great Britain took another step towards democracy when the Labour Government abolished not only the business-premise vote which gave a second vote to about 50000 persons, but also the 12 University seats in the House of Commons, and with them the second vote enjoyed by the university graduates who numbered 228, 765 in 1945. To-day, every adult citizen in the country (except the Lords) has one vote, and no one has more than one vote.

Along with the extension of suffrage there has taken place an increase in the powers of the House of Commons and a decrease in those of the House of Lords. So long as the predominantly hereditary House of Lords enjoyed, in theory, equal and concurrent powers of legislation, Great Britain could not be regarded as fully democratic. The Parliament Act of 1911 greatly curtailed the powers of the House of Lords and made it a truly secondary chamber. The Parliament Act of 1949 further reduced the power of the House to delay legislation from two to one year.

The reform and reorganisation of local self-governing bodies and their democratisation effected between 1835 and 1929, and the

reorganisation of the judicial system may also be mentioned in this connection. The British people have been able to work parliamentary institutions with exemplary success largely because of the training they receive in the art of managing their affairs at the local level. Without its roots in local self-governing institutions, democracy could not have been as successful as it has actually been.

The next significant constitutional development that has taken place in Great Britain during the last three quarters of a century is the tremendous rise in the power of the Cabinet. About a century ago the cabinet was not in a position to exercise the same degree of control over the decisions of the House of Commons as it does to-day; the latter could debate, decide, and question freely. Due to the growth of business before Parliament and the working of the party system initiative and guidance have passed into the hands of the Cabinet. Instead of being controlled by it, the Cabinet has become the master of the House of Commons. In the words of Professor Stout, Parliament has become 'more and more an arena where the Government is criticised and defended. The Government, not Parliament, is the dynamo of the political machine.'

This shift of the centre of gravity of the British political machine from Parliament to Cabinet represents the restoration of the old relationship between the executive and the legislature under which initiative and responsibility for political action lay with the kings and the function of the legislature was to vote supplies and see that they were properly spent, and to exercise some degree of control over the government. Where the present system differs from the old is that initiative and responsibility lie with the Cabinet and not with the King. This again shows that the prime feature of the British constitutional growth during the last several centuries has been its progressive democratisation.

Another trend that is conspicuous to-day is the great and important role played by the Civil Service in administration. Along with the increase in the power of the popular ministers there has been a corresponding increase in the significance and importance of the permanent civil service. For success in the implementation of their policies the ministers depend upon the efficiency, competence and intelligence of the civil servants. The latter play their part not only in executing the policy framed by the ministers, but also in the

formulation of that policy itself by placing at the disposal of their political chiefs the necessary information and experience. In the words of Ramsay Muir, 'Bureaucracy has become, during the last century, and especially during the last generation, a far more potent and vital element in our system of government than the theories of text-books recognise. It has, indeed, become the effective and operative part of our system.'*

The growing rigidity and increasing power of party organisation, an increasing use of the public corporation as the agency for the proper running of public enterprise, the great increase in the amount of delegated legislation, the increasing amount of central interference in and control over local bodies, and the demand for greater amount of decentralisation of authority to meet the problems created by the enormous increase in the activities and functions of government are other important constitutional trends noticeable in Great Britain to-day.

Before concluding this account of the British constitutional development it seems necessary to make mention of the union of England and Wales first with Scotland in 1707, and next with Ireland in 1800, of the creation of the Irish Free State in 1921–22, and of the growth of the far-flung British Empire over which, it was claimed, the sun never set. The character of the British Empire was profoundly affected by the grant of Dominion Status to Canada, South Africa, Australia, and New Zealand and the recognition of their new status by the Statute of Westminster of 1931. The character of the British Commonwealth of Nations underwent a further change when the Dominion of India became a Republic but retained its connection with the Commonwealth by recognising the Queen as the symbol of the Commonwealth. Later on Pakistan, also became a Republic, but remained a member of the Commonwealth. A number of countries in Africa which attained national freedom very recently have also joined the Commonwealth. The ease with which the structure of the Commonwealth has been changed from time to time illustrates the realism and adaptability of the British people. They are a practical people and attach greater value to experience than to abstract theory or dogma.

Constituent Elements of the Governmental Machinery.— We

* *How Britain is Governed*, page 76.

may conclude this brief review of the evolution of the British constitution with an enumeration of the various elements of which the governmental machinery is composed at the present time. In the succeeding chapters we propose to take each one of these elements for detailed study.

As has been pointed out earlier, Great Britain has the unitary form of government and not federal. In this respect she resembles France but sharply differs from the United States of America. It means that for the whole country there is but one legislature, one executive, and one supreme judiciary. To-day the three functions of government are performed by three different organs. These are (*i*) the Queen-in-Parliament to make laws; (*ii*) the Cabinet, the Civil Service and a whole array of departments to execute and administer the affairs of the state; and (*iii*) a number of courts to administer justice. But in the olden days, when the country was ruled and governed by the Saxon, the Norman, and the Tudor kings in a more or less despotic manner, this differentiation did not exist. The kings made laws and applied them, and also doled out justice to their subjects. The differentiation which is an important feature of the governmental system to-day is the result of the constitutional evolution described in the foregoing pages. The legislative and judicial functions have been taken away from the king and entrusted to other organs. The executive function alone remains vested in the Crown. One might say that to a degree effect has been given in Great Britain to the famous principle of Separation of Powers. It should, however, be noted that its effect has been very much modified by the development of the cabinet or parliamentary form of government under which the executive and the legislative organs are brought into close and intimate cooperation. Indeed, so vital is the modification that, in view of the dominating position occupied by the Cabinet in the affairs of the state, it may be said that *concentration of responsibility* in the Cabinet, and not the separation of powers, is the distinguishing feature of British constitutional practice.

Coming to the three main organs of government we may say that the Legislature consists of the Queen and Parliament organised into two chambers, called the House of Commons and the House of Lords. The Queen is not a member of any of the two Houses, but is an integral part of the law-making machinery in as much as no bill

passed by Parliament can be placed on the statute book and enforced by the law courts unless the Royal assent is given to it. We will devote separate chapters to a description of the constitution, powers and functions of the House of Commons and of the House of Lords.

The supreme executive authority of the state is vested in the Crown. This statement is not likely to be easily intelligible to the beginner who is not expected to know what the Crown is. He is likely to confuse the Crown with the reigning monarch from whom it is not dissociated either in legal theory or constitutional practice. The easiest way to understand the nature of the executive organ in Great Britain is to distinguish between the formal and the real executive. The Queen is the formal executive, and the Cabinet is the real or political executive. All executive action is taken *in the name of* the Queen but not *by* her. Governmental measures are being continually adopted and executive acts performed in the name of the Queen or the Crown about which the Queen may personally know little or nothing and to which she may sometimes be opposed. All this is possible because in Great Britain there is a distinction between the formal and the real executive. There is also the permanent executive called the Civil Service which plays a vital role in administration. An account of the executive organ must contain reference to these three parts of it. It will be conducive to an understanding of what is to follow on this count if the two fundamental principles underlying the British system are grasped at the outset. They are as follows :

(*i*) The Queen cannot perform any public act involving the exercise of discretionary powers, except on the advice of a responsible minister, betokened by his countersignature ; and (*ii*) for all such actions performed by or through the ministers, the latter are responsible to Parliament, singly as well as collectively. The Queen can do no wrong in the sense that she cannot be held responsible for any public act done in her name. The responsibility is of the ministers and not her's.*

The British system of law is one of the three systems prevailing in the world, the Romanesque and Mohammedan systems being the other two. It has important features on account of which it

* For another interpretation of the saying, "The King can do no wrong" see *infra* Chapter III, page 43.

deserves careful study.

Political parties have become an important organ of Government in every state today, even though they may not be always recognised by law. Reference must be made to the three main political parties functioning in Great Britain. Local self-governing institutions like the county and borough councils are an integral part of the governmental machine and therefore call for more than a passing reference. One chapter will be devoted to a study of the British system of local self-government. We do not propose to deal with the Government of Ireland or of any Dominion as a part of our study of the British Constitution.

We will take up the executive organ first for study. Historically it is the oldest ; and some of the most vital distinctions and principles of the British Constitution are involved in it.

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Chapter III

THE MONARCHY

Introductory.— We begin our study of the British political system with the Monarchy because the reigning monarch is the keystone of the political structure. This fact is forcefully brought home to us by the current expression 'Her Majesty's Government'. All activities of the government are carried in the name of Her Majesty. As has been pointed out in another context, the army, the navy, and the air force are Her Majesty's army, navy and air force; the ministers and the members of the permanent civil service are Her Majesty's servants; the post office is Her Majesty's post office. The acme is reached when even the official Opposition in Parliament is designated as Her Majesty's Opposition. It is of the utmost importance to grasp the import of these expressions.

From the days of William the Conqueror who gave to England a strong centralised government the Crown has been the central governing, directing and initiating element in the British national life; it retains that position even to-day. The forms of expression noted above testify to this vital fact. The sum-total of the powers and influence of the Crown has enormously increased since the days of William the Conqueror. There is, however, one great difference between the past and the present state of affairs. It is that to-day nearly all, but not quite all, the powers of the Crown are exercised by or on the advice of the Ministers of the Crown and not by the reigning monarch on his or her own will. Since the vital distinction between the Crown and the King does not exist in constitutional law, the old forms of expression continue in use. If we distinguish between the Crown and the King (or Queen), the statement made above, that the central governing, directing and initiating factor in the British system is the Crown, becomes clear and easily intelligible. Since neither in fact nor in theory the King or the Queen is dissociated from the Crown, and all the functions of the Crown are carried on in his or her name, there is sufficient justification for starting our study with the Monarchy.

Monarchy, the most unique of all the British Political Institutions.— Professor Andre Mathiot describes Monarchy as 'undoubtedly the most unique of all the political institutions of Great Britain'. It is 'both the oldest and the most mystical element in the constitution'.* We would go a long way in appreciating the role played by Monarchy in the British system if we understand what makes it the most unique of all the British political institutions.

Monarchy is the *o'dest* political institution in Great Britain, and with the exception of the Papacy, the oldest also in the whole of Europe. It was founded in 829 A. D. by King Egbert. Except for the brief interlude under Cromwell from 1649 to 1660, there has been no break in it. Queen Elizabeth II can easily trace her descent from King Egbert. In an age when monarchies and dynasties have been tumbling down like a house of cards this almost unbroken continuity of British monarchy is nothing short of a miracle. The remark of King Farouk made to Lord Boyd-Orr in Cairo in 1951, 'There will soon be only five kings left, the Kings of England, Diamonds, Hearts, Spades and Clubs', partially explains the uniqueness of the British monarchy.

Even more remarkable than its continued existence in an age which has taken a heavy toll of the institution and seen the extinction of Tsars, Kaisers and Sultans, is the glorious and almost religious view of royalty which prevails in England. It has endeared itself to the people and won their regard and affection in a way which cannot but be described as amazing in this era of democracy and which is not paralleled in any country where this institution survives. Mr. Dermot Morrah, an intimate biographer of Queen Elizabeth II, says: 'In its deeper meaning for the British people it is scarcely a system of government at all. It is their way of life. As such it is always popular, it is always changing and always the same; it is always up-to-date.'† The attitude of the British people towards Monarchy is best revealed by the fact that they regarded Queen Victoria as a mother incarnate. George V and George VI also played the role of a father to the people. The saying 'with the King in the Buckingham Palace the people sleep more quietly in their beds' represents the sense of security Monarchy has given to the British people.

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* Mathiot: *The British Political System*, page 262.

† Quoted by Kingsley Martin in his: *The Crown and the Establishment*, page 17.

In view of the deep love and esteem the British people have for their monarchs, British Monarchy may be said to be mystical. An institution which has endured for more than a thousand years and has been no bar to the growth of democracy in the country is indeed mystical and unique; it deserves careful study. It may however be pointed out here that the British people have not shown the same respect and affection and devotion to their monarchs at all times. There have been periods when respect for monarchy was at a very low ebb. 'Henry III was imprisoned; Edward II, Richard II, Henry IV, and Edward V were deposed and put to death. Richard III was killed after losing his crown; Charles I was executed; James II escaped to France after throwing the Great Seal of England into the river Thames.'* There was hostility even towards Queen Victoria during the earlier period of her reign. But since 1871, when Disraeli created Queen Victoria Empress of India, there has been a great change in the attitude of the people towards the institution. Not only has there been no adverse criticism of it, but what is more significant, it has steadily endeared itself to the people. The coronation of Queen Elizabeth II provided a striking evidence of the deep-seated love and affection of the British people towards their Sovereign. The Archbishop of Canterbury is reported to have remarked on the occasion as follows: 'This country and Commonwealth last Tuesday were not far from the Kingdom of Heaven.' It would be highly interesting and instructive to examine the causes which have been responsible for the survival of the British Monarchy in the midst of the crashing down of this institution in numerous countries in the world after World War I, and its rehabilitation in the love and esteem of the people. But before doing so, it is necessary to explain the distinction between the King and the Crown which Gladstone once declared to be the most vital in British constitutional practices, and without making which one cannot take even a single step in understanding the British system. The statement made in the second paragraph of this chapter that the Crown has been the central governing, directing and initiating element in the British Constitution can be regarded as true to-day only if we draw the distinction between the Crown and the King. It is absolutely untrue to hold that at the present time the Queen is the directing, governing and initiating factor in British political life; it is however an incontrovertible

* Mathiot : *op. cit.*, page 263.

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truth that the Crown does perform this function. Failure to make this distinction would result in ascribing to the Queen powers which belong to and are exercised by the Crown. When Bagehot said that Queen Victoria could disband the army, dismiss the navy, make every subject a peer, pardon all criminals, and begin a war for the conquest of Brittany ; and when at a later date Gladstone remarked that she appointed all civil and military officers, appointed and dismissed the ministers, received and held all the revenues of the State, made treaties, waged war and concluded peace, etc., they described not the personal rights and powers of Queen Victoria as the reigning monarch, but the powers vested in the Crown and exercised by the cabinet and other agencies which form part of it.

The King and the Crown.— Stated briefly, the distinction between the King and the Crown is the distinction between an individual human being and an impersonal institution. 'The King is by law, as by nature, a mere mortal man, but the Crown has become impersonal, immortal, and a symbol of ultimate unity and continuity of purpose in governance, a perpetual reminder that above and beyond all the ephemeral strife and clamour of daily political life there remains the everlasting ideal and purpose of government— the welfare of the State.'* As an individual being the King is born, gets crowned when the time comes, and ultimately dies ; he may abdicate earlier as King Edward VIII did, or may be deposed, as was the case with Edward II, Richard II and a few others. The Crown as an institution is immortal; it is never born and it never dies. Being impersonal it is never enthroned or deposed. Individual kings come and go, but the Crown, like Tennyson's brook, goes on for ever. Individual kings might be licentious, cruel and selfish ; but the Crown can never betray the interests of the people ; it is, as Dr. Chrimes beautifully points out, a perpetual reminder to the government of the day that it exists for the welfare of the people. In a word, Crown is kingship institutionalised.

The best way to understand the nature of the Crown as an impersonal and immortal institution is to study the manner of its origin and growth. There was a time in British constitutional history when the office of the King was purely personal and the kings ruled as well as reigned. When an individual king died, there occurred a

* Chrimes : *English Constitutional History*, page 12.

break in the continuity of government. Because kingship was hereditary, it gradually took on the character of an office which remained in existence at the death of its occupant and became independent of the coming and going of individual kings. This is the truth conveyed by the saying: 'The King is dead; long live the King.' In due course, Monarchy became an institution which remains unaffected by the ascension and death of kings as the principalship of a college remains unaffected by the coming and going of individual principals. It has gathered round itself traditions and standards which have moulded its character and which individual kings find it difficult to ignore or circumvent. In the United States also the Presidency has become a great institution with the accumulation of traditions as a result of the passage of time. The British Monarchy is however more elusive than the American Presidency; it is harder to analyse and describe than the latter. Let us study the way in which it has developed.

Monarchy as it stands at present in Great Britain is the product of the peculiar manner in which the British people dealt with royal power in their long contest with it. They did not destroy or dissipate the powers and authority of the Monarch as the Head of the State, but always tried to bind down their exercise to recognised modes of behaviour which, if duly observed, would make arbitrary action on the part of the king impossible, secure supremacy of law, and establish the ultimate sovereignty of the people. This they have been able to achieve to the fullest extent. The British Monarch of today is not a semi-divine despot as he was in the past; but the constitutional head of a parliamentary democracy. Queen Elizabeth II, indeed, wears the Crown, and all the powers of the Crown are formally vested in her. But with one single exception which will be noted in what follows, she cannot exercise them at her own initiative or will, she has to act on the advice given to her by her popular ministers. There would have been no confusion, if Queen Elizabeth II and her predecessors in office were thus represented in statutes and proclamations, in orders-in-council and formal documents in general; *i. e.*, if the distinction between the King and the Crown were observed in British legal and ceremonial terminology. In legal theory however the Queen is still the source of all authority. Neither the laws nor the conventions of the constitution make any distinction between the rights, powers and prerogatives of the Queen and those

of the Crown. In actual practice there is a world of difference between them. The Queen has no powers, but wields considerable influence and enjoys great prestige. The powers of the Crown which are formally vested in her are exercised in part by the Cabinet, in part by the Privy Council, in part by individual ministers, and to a degree by Parliament. It can therefore be said that the Crown is a subtle synthesis of the Queen, Cabinet, Privy Council, Ministers, and to a degree Parliament. Though not identical with the Crown, the Queen is not dissociated from it either ; she is its visible symbol.

The best way to understand the Crown is to know what it does. We may therefore conveniently describe at this stage the functions of the Crown.

Functions of the Crown.— It is not easy to describe the powers of the Crown in an exhaustive manner ; they are not only nowhere codified in any systematic way, but are also subject to change, diminishing in one direction and increasing in another. All that we can do is to mention the most important of them.

Firstly, the Crown is the supreme executive authority in Great Britain. As such it looks to the enforcement of all national laws ; makes appointments to almost all the high executive and administrative offices ; appoints officers of the army, navy, and air force ; conducts the foreign relations of the country ; manages the affairs of the colonies and the dependencies, and deals with the Dominions ; exercises the powers of pardon and repreive ; and directs administration. The Crown also appoints ambassadors and credits them to foreign states and issues instructions to them, and receives the ambassadors and representatives of foreign powers. It carries on negotiations with other States and concludes treaties and agreements with them. War can be declared and peace made only by the Crown. It may be added that the Crown owns and manages a considerable amount of public property ; e. g., coal mines. In so far as this executive work is done either by the Cabinet as a whole or by individual ministers, they constitute an integral part of the Crown.

Secondly, though the Crown does not formally make laws, it is an integral part of the legislative organ and plays an important role in legislation in several ways. It sets into motion the process by which a new House of Commons is constituted, and summons, prorogues and dissolves Parliament. Furthermore, no bill passed by

Parliament can be placed on the statute book unless it has received the royal assent. In so far as the Queen is still associated with the Crown, both legally and actually, the share of the Crown in legislation is indispensable. Apart from this, the Crown prepares bills and pilots them through Parliament, drafts and issues a large volume of what is known as delegated or subsidiary legislation. In so far as the Queen orders fresh elections to be held, summons, prorogues and dissolves Parliament, and gives the royal assent to bills enacted by Parliament, she is a part of the Crown. In so far as individual ministers draft and pilot bills through Parliament and are responsible for delegated legislation, they also constitute a part of the Crown.

Thirdly, the Crown is described as the 'fountain of honour'. This phrase means that all titles and honours are bestowed by the Queen. Her Majesty creates new peerages, confers kinghthoods and other titles and marks of distinction on persons recommended by the Prime Minister. Her own predilections do not count in the matter. Of course, if she has any suggestions to make, the Prime Minister usually accepts them and strikes off a name here and adds another name there in the list prepared by him.

Fourthly, an old tradition, which has now ceased to have any significance but still persists, describes the Crown as the *fountain of justice*. It had meaning in the past when the King appointed the judges who doled out justice to his subjects; but now the Queen has no judicial functions, except formally deciding appeals from the colonies which are heard and decided by the Judicial Committee of the Privy Council. Before 1947 the Crown heard appeals from the High Courts in India; this practice was given up when the Abolition of Privy Council Jurisdiction Act of 1949 was passed.

The power to grant pardons and reprieves is sometimes described as the judicial power of the Crown. This however is not a judicial act at all. The function of a judge is to hear evidence, and on its basis to convict or discharge the accused. The power to grant pardon or reprieve is the prerogative of the Head of the State as the supreme executive authority.

Fifthly, the Crown is the Head of the Church of England. In this capacity it appoints the archbishops and bishops, and gives assent to the rules and regulations framed by the convocations of Canterbury and York.

Finally, the Crown is the symbolic head of the Commonwealth of Nations.

From the manner in which the various powers of the Crown, as stated above, are exercised it is obvious that it is a subtle and intangible synthesis or combination of the Queen, the Privy Council, the Cabinet, the individual Ministers, and to a degree, Parliament.

It was pointed out above that the powers of the Crown have shown a tendency to decline in one direction and to increase in another. In so far as the royal prerogative is a source of the Crown powers, they have registered a tendency to decrease with the growth of democracy. By royal prerogative is meant the residue of discretionary or arbitrary authority which is at any time in the hands of the monarch. Obviously, the growth of democracy puts restrictions on the exercise of such authority. It was seriously limited by the *Magna Carta*, the Bill of Rights and the Act of Settlement. On the other hand, in so far as statutes passed by Parliament are a source of the powers of the Crown, the latter have shown a marked tendency to increase with the advance of democracy. Every new department that is established for the performance of new duties by the State means an addition to the powers of the Crown. In this context the Crown signifies the government of the day.

The totality of Crown's powers is symbolised in the person of the reigning Monarch, irrespective of the fact that most of them are exercised by the government and only a small fraction by the monarch, and that also mostly on the advice of popular ministers. The net result is that, though the Queen is still the source of all authority in legal theory, it is exercised not by her personally but by the government in her name.

The Monarch's Role in Government.— From the foregoing account of the distinction between the King and the Crown it should be evident that the reigning monarch is not the effective, directing and controlling factor in the State ; he neither shapes public policy nor exercises direct or positive control over public affairs. In technical language he simply reigns but does not govern. This should not, however, be taken to mean that the royal office has been denuded of all importance and reduced to cipher, and the monarch become a mere ceremonial figure-head. He occupies a position of great prestige, dignity, and influence. What Bagehot said about Queen

Victoria is true of her successors in office. He wrote : 'The use of the Queen, in a dignified capacity, is incalculable. Without her in England, the present English Government would fail and pass away.'* Nearly seven decades after Bagehot, Prime Minister Stanley Baldwin in the course of a speech in connection with Edward VIII's abdication observed as follows : 'The Crown in this country stands for far more than it has done in history..... being as it is not only the last link of the Empire that is left, but the guarantee in this country against many evils that have affected and afflicted other countries.' According to Amery the monarch symbolises the continuity of government in the British system.

There are numerous services which the reigning Monarch renders to the British State on account of which we can agree with Bagehot that without him the British Government would fail and pass away. One of them consists in being the symbol and link of national and imperial unity. At home, the King or Queen embodies in his or her person the majesty, the authority and the dignity of the British nation, and is the symbol of national unity. Abroad in the far-flung Empire he or she is the symbol of imperial unity. Queen Elizabeth is the queen not only of Great Britain but also of Canada, Australia, South Africa and New Zealand. Many recently freed countries of Africa which are members of the Commonwealth also acknowledge her as their Queen. It is loyalty to her which keeps the various members of the Empire and Commonwealth, with the exception of India and Pakistan and a few others, bound to one another by the closest of ties. If this link is snapped, the members of the Commonwealth are likely to fall apart. It is difficult to believe that in case England transforms herself into a republic with a popularly elected President Canada, South Africa, Australia, etc , would pay the same willing homage to the new dignitary which they now pay to Queen Elizabeth II. As long as the human heart is strong and human reason weak, royalty will remain strong because it appeals to the diffused feelings of the people, and a republic will be weak because it appeals to their understanding.

A reigning monarch has a halo, a glamour, and a magical personality difficult to associate with an elected President. He can be made to subserve domestic interests as much as imperial ends. British

* Bagehot : *The English Constitution*, page 30. World Classics Edition.

statesmen have put the Monarchy to the fullest use in the one as in the other sphere. They have tried to associate the royal family with solicitude for those objects which are most dear to the working classes in such a manner as to make Monarchy the symbol of democracy itself. Monarchy may be said to have strengthened government with the strength of religion. It appeals to sentiments which, though impalpable, are very powerful. One of the reasons for the rehabilitation of monarchy in Great Britain is the political use to which it has been put.

The great value of Monarchy as the symbolic link betwen the mother country and the Dominions and colonies is brought out by Sidney and Beatrice Webb in the following words: 'The particular function of the British monarch is not the exercise of governmental powers in any of its aspects, but something quite different, namely, the performance of a whole series of rites and ceremonies which lend the charm of historic continuity to the political institutions of the British race, and which go far, under present conditions, to maintain the bond of union between the races and creeds of the Commonwealth.'

In addition to being the symbol and link of national and imperial unity, the reigning monarch performs a number of functions which are indispensable for the smooth and proper functioning of parliamentary democracy in the country. First, when a new House of Commons is constituted, or the government of the day resigns and a new government has to be formed, it is the duty of the Monarch, and of the Monarch alone, to select a person and commission him to form the government. The selection of the Prime Minister is one of the most important prerogatives of the Monarch; in a way it is unique because in its exercise he is not bound to accept the advice given to him by the retiring Prime Minister. Though his choice is limited by the requirement that the new Prime Minister must be able to command a majority in the House of Commons and form a government and is usually obvious, the fact remains that neither Parliament nor the majority party has the right to elect the Prime Minister. In cases where the choice is not automatic, and this sometimes does happen, though not frequently, there is room for the Monarch to use his discretion. There have been some occasions when the leadership of the majority party was in doubt and the

reigning monarch exercised decisive influence. When Gladstone retired in 1894, Queen Victoria passed over the claims of Sir William Harcourt Butler and made Lord Rosebury her Prime Minister. When Mr. Bonar Law resigned on grounds of helath in 1923, King George V did not appoint Lord Curzon who had been functioning as Deputy Prime Minister during the illness of Mr. Bonar Law, but chose Mr. Stanley Baldwin for the office. More significant than these cases is the act of King George V in choosing Mr. Ramsay Macdonald as the Prime Minister to head a coalition government in 1931. In 1940 when Mr. Nevill Chamberlian resigned, the King chose Mr. Wintson Churchill even though he was not regarded as the leader of the Conservative Party next to Mr. Chamberlain. Recently, Queen Elizabeth passed over the claims of Mr. Butler who had been acting as Deputy Prime Minister, and appointed Mr. Harold Macmillan as the Prime Minister. These examples show that the selection of the Prime Minister is not always automatic ; there can be cases where the monarch has real freedom of choice. It may be repeated that this power is unique, in as much as in its exercise the Monarch is not bound to accept the advice of the official advisers.

The second important political function performed by the Monarch concerns Parliament. It is the royal prerogative to summon, prorogue and dissolve Parliament. These prerogatives are normally exercised on the advice of the Prime Minister. While no problem has arisen in regard to the exercise of the prerogative of summoning and proroguing Parliament, the case is otherwise in regard to the right of dissolving it. It has been contended in certain quarters that the right to dissolve is not solely a matter for ministerial advice ; the Monarch may himself take the initiative and dissolve the House of Commons without the advice of the Prime Minister in a matter of extreme gravity. Some Tory M. P.'s— Mr. Bonar Law, the leader of the Conservative Opposition included— held the view that the Irish Home Rule Bill sponsored by the Liberal Government of the day threatened a national civil war, and therefore advised King George V to exercise his royal prerogative of dissolution and allow the question to be settled by the electorate. The Monarch himself was inclined to this view, and in a letter addressed to Prime Minister Asquith referred to his 'undoubted right to change his advisers' and dissolve Parliament in the interests of the nation and on grounds which could be justified to Parliament. Fortunately, a compromise

was arrived at as a result of which some of the provisions of the Irish Home Rule Bill were modified, and the King did not find it necessary to change his advisers and dissolve the House of Commons. We may therefore conclude that although the existence of the royal prerogative to dissolve Parliament without ministerial advice may be conceded, it is certain that its exercise is bound to involve the Monarch into an acute political controversy. With a view to avoiding it it is best that the Monarch should exercise it only on ministerial advice. Supposing that King George V had acted on the advice of Mr. Bonar Law, dissolved Parliament, and ordered fresh elections, and that their result gone in favour of the Liberal Party, the position of the Monarch would have been seriously compromised ; he would have found himself in open disagreement with his people. If the result had gone in favour of the Conservatives, the Monarch would have been surely accused of partisanship. In either case, he would have been dragged into a bitter political controversy.

Accepting that normally speaking dissolution is a matter solely for ministerial advice, the further question arises : Is the Monarch always bound to grant the request for dissolution whenever made by a Prime Minister ? May he not refuse it and try to form an alternative government ? It is said that Queen Victoria, Edward VII, and George V held the view that they could refuse dissolution if an alternative government could be formed. It is not necessary for us to go into the details of the controversy. It is sufficient for our purposes to say that though the existence of the right of the sovereign to try to form an alternative government before granting a dissolution in the abstract may be admitted, the best way for him to maintain his political neutrality and keep himself above party politics is to grant the request to the Prime Minister whenever he makes it.

The third important royal prerogative is to give assent to the bills passed by Parliament. Royal assent is absolutely necessary ; no bill can become law until its receives the royal assent. The question has been asked : Can the Monarch refuse assent and thereby veto a bill ? In the earlier days of parliamentary history the monarchs were entirely free to decline assent to legislative measures adopted by Parliament ; refusals were common enough. But the power of veto has not been used since 1707, and may be regarded as having

become obsolete. The reason is the same as in the case of the other royal prerogatives considered above. The exercise of the right in any case is bound to be followed by the resignation of the government. Under the prevailing conditions it would be impossible for the Monarch to find an alternative government. The result would be dissolution of Parliament and fresh general elections. Whether the elections favour the outgoing party in power or not, the Monarch is bound to be labelled as partisan. His political neutrality, which is one of the basic requisites of the parliamentary system, would be seriously compromised. The right of veto has become inoperative like the right of dissolution and dismissal.

Mention may also be made of some other royal prerogatives. The Monarch is the only authority in the State to grant pardons and reprieves to persons found guilty and punished by courts of law. This prerogative is exercised on the advice of the Secretary of State for Home Affairs. He has also the right to grant titles and honours. This prerogative is exercised on the advice of the Prime Minister. No reference to Parliament is necessary in these two cases. The Monarch has the right to declare war and peace, conclude treaties with foreign States, and appoint diplomatic representatives abroad. They are all exercised on ministerial advice and generally involve reference to Parliament, even though it is not formally necessary in all cases.

It may also be added that the Monarch attends meetings of the Privy Council where orders-in-council are issued and important administrative legislation passed.

Almost all the functions noted above are exercised intermittently, and only for brief periods. From the point of view of the exercise of *royal influence* on public affairs they are of little significance. Far more vital than all of them put together is the Monarch's 'day-to-day role as critic, adviser and friend'. It is true that he no longer attends the meetings of the Cabinet and cannot therefore exercise direct influence on the deliberations of his ministers as his Tudor predecessors used to do. He has some other rights which enable him to exercise considerable *influence* on public affairs whose extent depends upon and varies with the intelligence and ability of the Monarch. An able monarch can be a great political force. Queen Victoria, King Edward VII, King George V, and King George VI were not mere ceremonial figure-heads, but wielded great

influence. Queen Victoria was an active and insistent agent in the conduct of government. She played a considerable part in the selection of her ministers; she could secure the appointment of some she liked and prevent the appointment of others she disliked. She also interfered in Church appointments. The influence of Edward VII was even greater than hers. 'He was powerful in influencing appointments. He was a controlling influence in complicated manoeuvers for army and naval reform. He put strong pressure on the Cabinet about his views on the government of India.'* George V is also believed to have played a notable part during the Irish crisis of 1911–14. Edward VII and George V made significant contributions towards the promotion of cordial relations between Great Britain and other countries. Queen Elizabeth II is no less active in public affairs. Her visits to different members of the Commonwealth have had important political effects.

What enables a reigning British Monarch to become a great political force and exercise great influence on public affairs is the fact that he has three valuable rights—the right to be consulted, the right to encourage, and the right to warn. Bagehot added that a wise and sagacious Monarch would demand nothing more. The right to be consulted implies that the King or Queen should be kept *fully* informed upon the business of the State, and that every important decision of the Cabinet should be submitted for his or her consideration before effect is given to it. It is the duty of the Prime Minister to keep him fully informed; before the Cabinet meets, the Prime Minister discusses all the important matters which are to come up for discussion before it, explains his views and those of his colleagues upon them and tries to understand the views of the monarch, with a view to placing them before the Cabinet. The Monarch has access to all Cabinet papers, all agendas, minutes, and reports of Cabinet Committees, etc. All important Foreign Office despatches are submitted to the Monarch before they are sent out, giving him an opportunity to urge modifications if he so wishes. All ministerial appointments have to be submitted for his approval, giving him an opportunity to suggest changes. He has other contacts also from which he can gather valuable information and advice. The Cabinet is bound to consider his views, thought it may

* Laski: *Parliamentary Government in England*, page 398.

not accept them. In view of the exalted nature of the source from which it emanates and the great knowledge of men and affairs which the Monarch generally possesses, the royal advice cannot be lightly treated by the Cabinet. The Sovereign is thus in a position to exert considerable influence upon the Cabinet without being a member of it. Dr. Jennings says that the monarch 'may be said to be almost a member of the Cabinet, and the only non-party member. He is, too, the best informed member and the only one who cannot be forced to keep silent. His status gives him power to press his views upon the Minister making a proposal and (what is sometimes more important) to press them on the Minister who is not making proposals. He can do more; he can press those views on the Prime Minister, the weight of whose authority may in the end produce the Cabinet decision.'*

The public is not in a position to know anything about the activities of the Monarch because they are carried on behind the scene. The facts come to light only after the death of the Monarch when his or her biography is published.

The Monarch has the right to encourage and the right to warn. The first signifies that he can tell the Prime Minister that the policy he is pursuing has his approval and that he can go forward with it. The right to warn signifies that the Sovereign feels that the proposal placed before him is not good and is likely to have injurious consequences. He advances reasons in support of his view and suggests alternative ways. This does not mean that the Monarch can oppose the Prime Minister; it simply signifies his right to act as a critic and guide. The position of the Monarch in relation to his ministers is well brought out in the following imaginary words put in his mouth by Sidney Low. The King says to his minister: 'The responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best must have my full and effectual support. But you will observe that for this reason and that, what you propose is bad, what you do not propose to is better. I do not oppose; it is not my duty to oppose, but observe that I warn.'† A fine example of the way in which King George V exercised with effect his right to warn is supplied by the letter he wrote to Prime Minister Asquith on

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* Jennings: *Cabinet Government*, pages 327-8.

† Sidney Low: *The Government of England*, page 264.

the Irish Home Rule Bill.

Royal influence in England is not limited to the political sphere alone; it extends to other branches of national activity. Like the ancient Indian rajahs, maharajas and emperors, the British Sovereign is expected to patronise art, literature and science. The occupant of the Throne is the head of the British society and sets the standards in social etiquette and morals. What the King and the Queen and other members of the family say and do and think becomes a sort of minor ethical code for the nobility and well-to-do, and through them for a larger circle. It may also be added that many of the great movements for improving the condition of the masses are inspired or patronised by members of the royal family. Royal family may be said to be functioning as the directing mind of the nation in the sphere of charitable activities. Schemes for providing better houses, medical aid and good nursing, and relief in distress are some examples of charitable activities.

Immunities and Privileges of the Monarch.— The Monarch enjoys many personal immunities and privileges which may be noted here. Perhaps the most significant of them is immunity from legal action. The Queen is above law; she can do no wrong. She cannot be called to account for any personal conduct befory any court of law, not even if she were to deprive any citizen of his life or property by any rash or wilful act.*

Though the Queen is immune from the authority of law courts for acts done by her, the same immunity does not extend to her ministers and servants; they can be sued and held responsible for injustice done to private citizens Before 1848 government servants could not be sued, except in a few minor cases specially provided for by statute. Now they can be sued for civil wrong and contract like private citizens. If the aggrieved party is awarded some compensation for the damages sustained by it, the money is paid out of the

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* In a different context it was maintained that the King can do no wrong. Then it was meant that he cannot be held responsible for any public act done in his name; the responsibility for that is that of his popular or responsible ministers. In the present context the King is above law in a different meaning; he can do no wrong in the sense that he is immune from the authority of law courts. For a full explanation of the statement, 'The King can do no wrong' both the meanings should be indicated. Either meaning by itself fails to convey its full significance.

legal supremacy of Parliament. It is an essential feature of this system that the political executive is responsible to the popular branch of the legislature ; the former has to act in accordance with the will of the latter. The Cabinet cannot act in defiance of the wishes of Parliament. (*ii*) Parliament stands at the centre and focus of all British political life. Though it is no longer the centre of political power as it was during the middle of the last century, it still continues to be the centre of political stage. All important questions are discussed and debated in it, even though the decisions are taken elsewhere. But in as much as all initiative and control are lodged in the Cabinet and the House of Commons has become subservient to it, this name is rather inappropriate. It fails to high-light the pivotal position which the Cabinet has come to occupy in the system. The other name by which the British system is sometimes known, namely, the Cabinet system, is more adequate from this point of view. This name indicates the dominant position of the Cabinet in it. The Indian system of government may for the same reason be designated as Cabinet, but not the French system under the Third and Fourth Republics. The latter was characterised by the supremacy of the legislature ; in it Parliament remained supreme both in theory and practice ; it could dismiss ministries with great ease. In short, whereas the parliamentary system developed in the direction of government by the Assembly in France, in Great Britain it developed in the opposite direction of the domination of the Cabinet. In Great Britain a peculiar relationship has become to subsist between the Monarch, Parliament and Cabinet in which the Monarch has been obliged to withdraw itself from active participation in the exercise of political power in favour of the Cabinet, and Parliament also has become subservient to the latter, though in theory it remains the supreme organ in the state.

The supremacy of the Cabinet is nowhere set forth in the constitutional law of Great Britain. However diligently one may make a search for it in the written law of the land, one would not find more than incidental references to the Cabinet or to its leader. The supremacy of the Cabinet and the leading position of the Prime Minister within the Cabinet are entirely the product of usage or custom ; there has been no formal delegation of authority either to the Cabinet or to the Prime Minister. The dominant position of the

Cabinet in the British system without any basis in constitutional law is one of the anomalies of the system.

We have already traced the origin and development of the Cabinet in a previous context, and therefore need not refer to it here. Our present task is to define and describe its present organisation and functions, determine its relation to the reigning monarch on the one side and to Parliament on the other, and state the principles on which it works. Before proceeding with this task, we may add a few words about the distinction between the Cabinet and the Ministry.

The Cabinet and the Ministry.— Sometimes these two terms are used as synonyms; but since they differ in composition as well as in functions, it is desirable to distinguish them carefully. Though distinguishable, they have much in common also; together they stand out as a group distinct from the group of permanent civil servants. Their office is political, while that of the latter is non-political. All the members included in a Ministry are Crown officials like the members of the permanent Civil Service, but the former are designated as political officials because they are members of either house of Parliament and are individually and collectively responsible to the House of Commons. They have to go out of office the moment they lose the confidence of the House. Membership of the Civil Service is incompatible with membership of Parliament; its tenure is independent of the confidence of the House of Commons. This difference in their relationship to the House of Commons thus constitutes the main point of difference between the Ministry and the Civil Service. While the members of a Ministry change with every change of Prime Minister, civil servants remain unaffected by changes of government; they serve all parties with equal zest and loyalty.

Within the Ministry we can distinguish four different groups of persons holding offices of a political nature. To the first group belong heads of administrative departments like the Chancellor of the Exchequer; the Secretary of State for Foreign Affairs, for Home Affairs, for Colonies, and for Commonwealth Relations; Minister of Defence, Minister of Education, and the President of the Board of Trade. To the second group belong persons like the Lord President of the Council, Lord Privy Seal, and the Chancellor of the Duchy of Lancaster who are indeed high officials of the state but

do not hold charge of any administrative department. They are sometimes known as ministers without portfolio. To the third group belong junior ministers and parliamentary under-secretaries one or more of whom are found in each department and who are spokesmen for their departments in the House of Commons when the head of the department has a seat in the House of Lords. To the fourth group belong certain officials of the royal household like the Treasurer, the Comptroller and the Vice-Chamberlain who are deemed to hold offices of a political character. The size of the Ministry is not fixed. Before the first World War it contained from 50 to 60 members. During the War its strength rose to about 90, but in the post-war period it was brought down to about 65. The strength increased again during the second World War, and has remained large since then. On January 1, 1957 the Ministry contained 116 members, of whom 19 held cabinet position, 19 were other senior ministers, and 78 were junior ministers and parliamentary secretaries.

The Ministry as such never meets ; it has no corporate character and no collective function. Each member of the Ministry has his own function which in some cases is deliberation and policy-formulation, and in others it is administrative only.

The Cabinet is a much smaller group within the larger Ministry. It consists of persons whom the Prime Minister habitually consults on all matters of high policy and who together constitute the supreme ruling body in the state. Unlike the Ministry, the Cabinet has a corporate personality and a collective function. It meets once a week or whenever the Prime Minister chooses to convene it. It is responsible for formulating the general policy of the government and arriving at decisions on all important issues. Its members have a dual role and function. Collectively they deliberate and formulate policy ; individually they are responsible for the administration of the affairs of some department or some other work. Every member of the Cabinet is a member of the Ministry, but every member of the Ministry is not a member of the Cabinet. It may also be added that every member of the Cabinet, but not every member of the Ministry, is a member of the Privy Council. Cabinet ministers are always sworn in as members of the Privy Council. In the person of a Cabinet Minister three different functions are combined together : as a cabinet minister he deliberates and formulates policy ; as a member

of the Privy Council he decrees, and as a minister he executes. These functions are not combined together in the case of other members of the Ministry.

With these introductory words we may proceed with our account of the size, formation, powers, functions and role of the Cabinet.

Formation and Size of the Cabinet.— Since the whole of the Cabinet system rests upon custom or convention, it is not at all surprising that there should be hardly any reference to the principles governing the formation and size of the Cabinet in the constitutional law of Great Britain. It was in 1937, more than 200 years after the Cabinet had come to be known by this name, that Parliament took formal notice of it by passing the Ministers of the Crown Act. The Act was passed with a view to establishing some degree of uniformity in the salaries given to ministers of different ranks, and not in order to set forth the principles of its working or define its powers and functions. It fixed the salary of the Prime Minister at £ 10,000 a year, and that of a minister of cabinet rank at £ 5,000. Other ministers are paid £ 3,000 a year. It did not determine the size of the Cabinet.

During the eighteenth century the Cabinet contained from seven to nine members. During a greater part of the nineteenth century it had from twelve to fifteen, and during the decade and a half preceding the first World War its strength rose to 20. Some Cabinets in the present century had as many as 23 members. It is however generally agreed that a cabinet of more than 20 members is too unwieldy for efficient business; therefore the tendency is to keep its size below 20. Since 1945 Cabinets have consisted of from 15 to 20 members. The Labour Cabinet had 18 members in 1951, and the Conservative Cabinet that took office after the following elections had 16 members. It seems that 16 to 18 is the most effective number of Cabinet members.

It is the business of the person invited by the Monarch to form the Government to choose the Ministry. There are no laws of the constitution to help and guide him in the choice of his colleagues; but neither is he absolutely free in the matter. Certain customs or conventions have developed in the course of time which determine his choice. The following are some of them: (i) Since a modern cabinet acts as a link between the Sovereign and Parliament and

Cabinet Ministers have to be in close touch with the latter, the convention has developed that every minister must have a seat in either house of Parliament. This does not mean that every person appointed to a ministerial post must be a member of Parliament at the time of appointment; there have been cases of persons being appointed as members of a War Cabinet without being members of Parliament; *e. g.*, General Smuts. It only means that no one can hold a ministerial appointment for long without finding a seat for himself in either House. In some cases it may be considered desirable or even necessary to include a particular person in the cabinet who does not belong to either house. He may take over duties provisionally, subject to his finding a seat for himself in Parliament. The matter can be easily handled by asking a loyal party man to give up a safe seat and thereby opening the way for a by-election which the provisional minister can contest. If he is duly returned from there, he retains his ministership. If he is defeated, he has to vacate the office. It may thus be concluded that it is the normal practice in Great Britain for ministers to be members of either house of Parliament. (ii) The Ministers of the Crown Act, 1937, lays down that besides the Lord Chancellor who presides over the House of Lords and is the head of the Judiciary, there must be at least three other members in a Cabinet with seats in the House of Lords. In other words, law requires that the Lords must be represented in the cabinet by at least four ministers. A Conservative cabinet generally contains more than the required minimum. Convention, however, demands that important figures like the Prime Minister, the Chancellor of the Exchequer and the Minister of Defence should have their seats in the House of Commons. (iii) The Prime Minister has to choose his colleagues with an eye upon party solidarity. He has to consult his party colleagues and accommodate, as fas as he can, the different factions in it. It is said that Prime Minister Clement Attlee chose Mr. Aneurin Bevan for the post of Minister of Health not out of any great regard for that gentleman, but with a view to softening the opposition within the party itself. (iv) While the Prime Minister has to take in persons who have held ministerial posts in the past he has also to include some gifted younger men. This is necessary for two reasons. Future party leaders have to be trained, and discontentment among partymen has to be avoided. Proper geographical distribution, though not so important as in our country or in the U. S. A.,

cannot be altogether ignored. The claims of women have also to be kept in mind ; there is usually at least one woman in a ministry. In a word, we can say that the Prime Minister cannot be guided solely by his personal likes and dislikes in the choice of his colleagues ; his selection is determined by certain well-established conventions, and above all by the requirement that he must find a team that will work smoothly and satisfy the party leaders.

Attention may be drawn to one more fact in this connection. Normally, a cabinet consists of members of the same party ; this is necessitated by the principle of collective responsibility. But in times of national emergency a coalition ministry is generally formed. Coalition ministries functioned during the two World Wars and also during the economic crisis that started in 1931.

It may also be added that a politician gets a seat in the Cabinet after a long apprentinceship in Parliament ; it is the reward of meritorious service rendered in humbler capacities. A member of Parliament has first to spend some years on the back benches. If he reveals certain qualities of character, mind and temperament, he may become a parliamentary secretary to a minister, and next promoted to a junior ministership, Finally, if he is able to impress himself on his colleagues and win their esteem by displaying wide general understanding, commonsense and judgment, sincerity of purpose, ability to sieze the essential point of a problem, and the capacity to arrive at a rapid decision, he may find himself a member of the Cabinet some day. Eloquence is certainly a desirable qualification ; but it would not carry an individual very far if he does not possess the other qualities mentioned above. A strong moral character and a broad outlook are indispensable. A democracy in which morally unscrupulous persons with narrow minds occupy high offices would soon come to grief. The Britishers were able to carve out the largest empire the world has so far seen and rule over it successfully for a long period because the British cabinets usually contained men of high intellectual and moral calibre.

What is true of members of a cabinet in general is still more true of the Prime Minister. He must be a person of great talent, wide understanding, keen intelligence, and a strong moral character. He must have an abundant knowledge of human nature to enable him to choose and rely on able colleagues. Quite a large number of

British Prime Ministers have been men of eminence. It is hardly necessary to point out that all the memhers of a cabinet are not men of exceptional qualities ; some of them have to be included because of other considerations which would be stated shortly.

As has been stated earlier, neither the size of the Cabinet nor of the Ministry is fixed. It is for the Prime Minister to determine their size and composition. The Prime Minister also decides which member shall hold which office, and which ministers shall be invited to attend meetings of the Cabinet. There are some Heads of Departments and persons holding high offices who are invariably included in the Cabinet. The Chancellor of the Exchequer, the Secretary of State for Home Affairs, the Secretary of State for Foreign Affairs, the Secretary of State for Commonwealth Relations, the Lord Chancellor, the Lord President of the Council, the Lord Privy Seal, and the Minister for Defence are always there. In regard to others it is the Prime Minister who decides whether they are to be included or not. It is, however, the general custom to include the Minister of Labour and National Service, the Minister of Health, the Minister of Housing and Local Self-Government, and the President of the Board of Trade in the Cabinet. But sometimes some of these are dropped to make room for the Minister of Education, the Minister of Supply, the Minister for Agriculture and Fishries, or the Minister for Fuel and Power. The Secretary of State for Scottish Affairs is also generally included in the Cabinet. Whether any one or more than one of the ministers named last are to be taken in the Cabinet depends upon the prestige of the persons concerned and the importance of the portfolios they hold.

It is implied in the foregoing that in the choice of his colleagues and the assignment of places to them the Prime Minister is theoretically free. Parliament does not control his action in any direct manner. It is also true that whatever list he submits to the King or Queen will receive his or her assent which is formally indispensable. In practice, however, the Prime Minister has to work under many restraints and restrictions. They have been described above ; we may refer to them briefly here. It must be remembered that the Prime Minister holds his office in virtue of his being the leader of his party ; therefore he has constantly to bear in mind the party relationship in everything he does. He must choose certain of his colleagues

because they hold important positions in the party and might even have been aspirants for the premiership; the party expects their presence in the Cabinet. In some cases they may be so important as to insist upon getting the office each wants. The Prime Minister cannot also ignore the claims of those who functioned in earlier cabinets and have been elected to Parliament. He has also to think of younger men with reputation behind them. He has also to satisfy different groups, factions or interests in the party, and also to distribute ministerships so as not to exclude any geographical area. Then there is the public opinion to be taken note of. Furthermore, since the aim of the Prime Minister is not merely to make a number of appointments, but to form a team that will work smoothly and satisfy the party leaders, he cannot be guided solely by his personal likes and dislikes. In the choice of his colleagues he has to consult the party leaders and accept many compromises. Nevertheless, he has ample discretion in the choice of the ministers, its extent depending upon the degree of his personal influence and position in the party.

The list of ministers prepared by the Prime Minister has to be approved by the Sovereign. The Monarch has the right to discuss the proposed appointments; he can object to the inclusion of certain names and suggest other names in their places. Queen Victoria is reported to have prevented the appointment of Lord Ripon as the Secretary of State for India. But if the Prime Minister insists on his list, the Sovereign has to give in and accept the list. It may be added that the successors of Queen Victoria were much less active in this matter. It is one of the established principles of British political system that the ministers should have the confidence of the Prime Minister and of the party, and not that of the reigning monarch.

One more thing about the qualifications for ministerial appointment deserves mention; it is vitally connected with the working of the cabinet system. In the choice of his collegaues the Prime Minister is influenced by their parliamentary experience and record and commonsense and general intelligence, and not by any expert or specialised knowledge that they may possess. Specialists are seldom appointed as Ministers in Great Britain. A specialist may become a first-rate executive head of a department, but he would be a misfit as a minister. Expert knowledge in regard to a particular branch does not add to the qualifications of a minister; it may be a

positive disqualification because of the narrowness of outlook which it involves.

From the foregoing it is clear that the Prime Minister is central to the formation of the Cabinet. He is equally central to its life and death. He is central to its life because members of the Cabinet hold office during his pleasure ; he can secure the removal of a minister by the Crown. He is central to its life also in the sense that the cabinet takes its colour and complexion from his personality and from what he does. He is central to its death because his resignation means the resignation of the entire Ministry. Lord Morley's description of the Prime Minister as the 'key-stone of the Cabinet arch' is very appropriate and suggestive. Recent developments have tended to increase his authority and status. In view of the vital role he plays in the formation and life of the Cabinet we may devote the next section to a study of the way in which this most powerful and important official is appointed.

Appointment of the Prime Minister.— Technically it is the function of the Monarch to choose the Prime Minister. There was indeed a period when the kings really chose their prime ministers ; even now an occasion might arise when he might be in a position to make a real choice from among a number of possible candidates. Speaking generally, however, it may be said that the Monarch's choice is automatic ; it is indicated by the political situation. He has to call the recognised leader of the political party returned in a majority to the House of Commons by the electorate (or the leader of the official Opposition, if the new government is the result of a censorious act of the House which is seldom the case). In so far as it is the electorate which brings one party into power rather than another, it may be said that the Prime Minister is virtually the choice of the electorate ; a general election is in reality, though not in form, the election of the Prime Minister. In so far as sometimes it is the party members in the House of Commons who choose their parliamentary leader*, they too may be said to have a hand in the selection of the Prime Minister. The electorate selects the party by which it wants

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* The Labour party insists upon the right of the Labour members of Parliament to choose their own leader, but the Conservative party does not follow this practice. It generally elects the Prime Minister as its leader. 'Mr. Baldwin became leader in 1923, Mr. Chamberlain in 1937 and Mr. Churchill in 1940, because they were Prime Ministers.' (Jennings : *British Constitution*, page 105.)

the country to be governed : the party singles out the man it wants to honour, unless it already has a leader who led it to victory in the general election ; the King sets the seal of approval on the choice thus made by the country and the party by commissioning the person thus indicated to form the government. It would thus appear that the Sovereign has not much discretion in the choice of the Prime Minister ; he may be said to appoint rather than to choose him in a great majority of cases. He has a choice only when no party has an absolute majority as happened in 1924, or the majority party has no recognised leader.

Attention may be drawn to one or two other points connected with the Prime Minister's appointment. It has now become an almost regular constitutional convention that he shall belong to the House of Commons. It is to that House and not to the House of Lords that the government is responsible ; it is there and not in the upper chamber that public opinion is reflected and parliamentary opposition is to be found. It is necessary that the Prime Minister should be present in the House of Commons to meet and answer the criticism and challenge of the Opposition. When Bonar Law resigned in 1923, the King's choice lay between Lord Curzon who belonged to the House of Lords, and Mr. Baldwin who was the obvious candidate from the House of Commons. Of the two Lord Curzon was the more experienced, but the King was advised to send for Mr. Baldwin mainly on the ground that the Labour party which formed the official Opposition was practically unrepresented in the Upper House.* Secondly, it should be remembered that the King generally invites the suggestion of the retiring Prime Minister in regard to his successor, but is not bound to do so. There have been cases when the King did not consult the retiring Prime Minister. The King may also talk to other persons and feel the situation for himself in case where the political situation does not clearly indicate the new Prime Minister.

The Fundamentals of the Cabinet System.— Before proceeding with an account of the powers and functions of the Cabinet and setting forth its relations to the reigning Monarch and Parliament, it

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* Mr. Amery is however of the view that this plea was an after-thought meant to rationalise the decision in favour of Mr. Baldwin which had been taken by some junior members of the Cabinet. They agreed that Mr. Baldwin would be more acceptable to the rank and file of the party. See his *Thoughts on the Constitution*, page 24.

seems desirable to state the main principles on which the cabinet system works. It would help the reader to form a clearer picture of the system as a whole and of the nature and activities of the Cabinet itself. These principles have evolved during the course of the slow growth of the system and rest on convention and not on law. There can be no fixed order of priority among them ; each writer is free to list them in any order he prefers. We state them in the order that appeals as the most logical to us.

(*a*) *Independence of Royal Favour.*— Perhaps the most vital principle on which the successful functioning of the Cabinet system depends is that the ministers should not depend upon royal favour for remaining in office. A government should remain in the saddle so long as it enjoys the confidence of the popular branch of the legislature ; its tenure should be wholly independent of the will or favour of the monarch. In Great Britain the principle that royal favour was not necessary or sufficient to maintain the ministry became established only towards the middle of the last century. It was only in 1841 that Sir Robert Peel could carry a resolution in the House of Commons that it was at variance with the spirit of the Constitution for a ministry to continue in office without the confidence of the House. Before that date Queen Victoria managed to maintain in office the ministry of Melbourne who was her favourite though his party was in a minority in the House, and denied Sir Robert Peel the opportunity to form the government though he had majority in the House behind him. If the reigning monarch is to function as the constitutional Head of the State and take no part in public affairs, the observance of this principle is absolutely necessary. This in turn demands that the general elections should give a decisive majority to one party. If no single party gets an absolute majority in the House of Commons, minority governments can be kept in office by royal influence.

(*b*) *The Party Character of the Cabinet.*— Since it was the development of the party system in an extended electorate which made it impossible for Queen Victoria to keep minority governments in office and forced her to instal into office the leader of the majority party, we can regard the *party* character of the Cabinet as its next vital feature. It has several implications. It means that (cases of coalition cabinets apart) every member of the Cabinet, nay, of the

whole ministry, is normally drawn from the same party. Experience shows that smooth working becomes difficult if a Cabinet contains persons holding contrary political views. A Cabinet drawn from a single party works best because it has a unity of outlook and purpose. It also means that a Cabinet governs the country in the name of the party which provides it with a majority in the House of Commons. This is why we say that it is the Conservatives or the Liberals or the Socialists who rule the country. It further implies that the Cabinet will try to put into practice and give effect to the party programme placed before the nation at the election time. So long as it continues to give effect to the party decisions and policies, it can rely upon the support of its followers and keep itself in power. The moment it tries to go beyond 'the party line', it runs the risk of forfeiting its majority and therefore power itself. This is the reason why the Cabinet is sometimes defined as a committee of the party (or coalition of parties) commanding a majority in the House of Commons, selected by one man to govern the country.

This, however, should not be taken to mean that the party can or should direct and control the Cabinet from *outside*. It would be going against the spirit of parliamentary government if the cabinet were to be regarded as an instrument for carrying through the policies of the party without reference to Parliament. Parliament must not be made a mere instrument for registering the decrees of the majority party as was sought to be done by the Communist party in Kerala. The Cabinet should pay due attention to the views of the Opposition and govern with its consent or acquiescence. Otherwise majority rule would lose its rationale and significance.

(c) *Its Homogeneity.*— The *homogeneity* of the Cabinet follows from its party character. It is obvious that when all the members of a cabinet are drawn from the same political party, they will display great similarity in their political views and conceptions and work together in a team spirit for the realization of their common aim. The true spirit of cabinet system disappears when its members belong to different political camps. Coalition cabinets are not true cabinets at all. The Indian National Congress may be said to have shown a genuine grasp of the principles of the cabinet system of government when it declined to form coalition cabinets in the provinces in 1937.

(*d*) *Its solidarity.*— The *solidarity* of the Cabinet does not merely signify that it works like a team. It also means that, whatever be the differences among the members themselves on an issue, those differences shall never be revealed to the outside world: to the King, to the Commons and the country at large. Once a decision is taken after due deliberation and thought, all the members have to stand by it; none can criticise or oppose it on the floor of the House, in the press, or from the platform. This applies not only to the Cabinet ministers, but also to every member of the Ministry. If a member cannot reconcile himself to a decision taken by the Cabinet, he must resign. If he does not himself resign and opposes the decision publicly, the Prime Minister can get him removed from office by the Crown. Prime Minister Attlee once secured the dismissal of five parliamentary secretaries because they voted against a Government Bill. Solidarity of the Cabinet thus means its collective responsibility; it is a very vital feature of the Cabinet system.

(*e*) *Leadership of the Prime Minister.*— Intimately connected with the *party* character of the Cabinet is the ascendancy or leadership of the Prime Minister in it. Indeed, the two developed simultaneously. So long as the party system remained fluid and the monarch retained ultimate control of national affairs in his own hands, the cabinet system could not grow. Ministers depended upon royal favour and governments on royal support. But as the electorate expanded with successive Reform Acts and party discipline grew more rigid, and the monarch was forced to withdraw himself more and more from national affairs, the cabinet system in its present form developed and with it the leadership of the Prime Minister. Though Sir Robert Walpole is sometimes described as the *first* Prime Minister, he was far too dependent upon royal favour for remaining in office to merit this honour. It is Sir Robert Peel who found himself in a position closely resembling that of a modern Prime Minister, when in 1841 Queen Victoria had no option but to call upon him to form the government, much against her will.

The Prime Minister is not a mere first among equals, as he was usually described in the past. He is the key-man in the Cabinet, 'the key-stone of the Cabinet arch' as it is commonly put. He is the key-man in it because he is central to its formation, central to its life, and central to its death. He selects the other ministers and puts them

where they are. He exercises general supervision over their work and co-ordinates their activities. He counsels with individual ministers, encouraging, advising and admonishing them whenever necessary. If there arise differences between them, he tries to settle them. If a minister refuses to cary out his instructions, he can demand his resignation or secure his dismissal by the Crown. If a number of cabinet ministers differ from him on an important issue, he may demand the acceptance of his views by them ; or as an alternative, his resignation or theirs. It is very difficult to turn him out since he is the leader of the party. He presides over the meetings of the Cabinet and controls their agenda. He is the sole channel of communication between the Cabinet and the Queen. As has been stated in another context, he thrashes out with the Queen important matters before they are discussed by the Cabinet and communicates to her the decisions arrived at by it. He is the spokesman of the Cabinet on all important matters ; Parliament and the nation look to him for authoritative pronouncements and statements of government policy. He is expected to speak on the more important bills and measures before Parliament and bear the brunt of debate on behalf of the government. He alone determines whether and when Parliament shall be dissolved. Because of all these and other powers and functions, he dominates the Cabinet. In view of his central and key position it is wrong to describe him as *primus inter pares*, as first among equals in relation to the other members of the Cabinet. They cannot in any valid meaning of the term be regarded as his equals. He is the working head of the State, and enjoys a national standing which no other member of the Cabinet can approach, much less equal.

Nevertheless, the British Prime Minister is not the master of the Cabinet in the sense in which the American President is the master of his Cabinet. His position cannot approximate to that of the American President in relation to his Cabinet. Though he selects the cabinet ministers and puts them where they are, the latter are not his servants; they are not responsible to him but to Parliament. He cannot deal with them in an autocratic manner, but has to take them along with himself. It can be said that about half of them are there in the Cabinet not because of the Prime Minister's generosity and favour ; they hold their position in virtue of their status in the party. The same cannot be maintained in regard to the members of the American Cabinet. There is a second reason also for the com-

paratively weaker position of the British Prime Ministe *vis-a-vis* his Cabinet. His 'authority is a matter of influence in the context of party structure and not of defined powers legally conferred.'* He is thus not in a position to coerce his colleagues, but has to persuade them to fall in with his views. Something more will be said about the powers of the Prime Minister at another place.

It is interesting to note that the parliamentary system has worked in quite a different manner and produced different results in France, because there the Prime Minister does not lead the Cabinet in the same way as in Great Britain, and the Cabinets there are not homogeneous.

(*f*) *Ministerial Responsibility*.— Ministerial responsibility may be regard as another salient feature of the Cabinet system. This responsibility is of two, or even three, types, which may be called legal, political, and intracabinet. By *legal* responsibility is meant the fact that the minister who countersigns the executive decree or order issued in the name of the Crown is responsible for it, and can be sued in a court of law for consequences flowing from it, if it can be shown to be illegal. *Political* responsibility, which may be regarded as Britain's chief contribution to the art and science of government, is entirely different from it. It means that every minister, whether included in the Cabinet or not, is accountable for all his public acts before the House of Commons. This accountability is as important a condition of good government as the integrity and efficiency of ministers. It signifies nothing more than that if the popular branch of legislature censures any public act of a minister he has to resign. A minister is allowed to administer the affairs of the state only so long as he can get the approval of Parliament for his acts and policies. The moment he forfeits this confidence, he has to make an exit. There are several ways in which the legislature may manifest its disapproval of a minister's policies. It may pass a simple motion of no confidence in him, criticise and censure some particular action of his, refuse to pass a bill sponsored by him or change it in a way not acceptable to him. In short, political responsibility means that a displeased House of Commons can force a minister or the whole Cabinet out of office. Intra-cabinet responsibility is also known as *collective* responsibility. It is as integral a feature of the cabinet system as political responsibi-

* Laski : *Parliamentary Government in England*, page 241.

lity. It means that each member of the Cabinet is responsible for the decisions of the Cabinet as a whole and is bound by them. 'For all that passes in the Cabinet, each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues.' Thus said Lord Salisbury in 1878. The Cabinet functions as a unit; it is a unit as regards the King, and a unit as regards Parliament and the country. It gives advice to the Sovereign as a whole and places its views before Parliament as a whole. No member of the Cabinet is permitted openly to criticise or oppose any of its decisions. If he differs from it, the only alternative for him is to resign. A vote of censure against one minister is a vote of censure against the Cabinet as a whole. All of them sink or swim together. The principle of Cabinet system is 'Each for all and all for each'. The Cabinet is responsible even for decisions reached by individual ministers in their respective departments without their having been discussed by it. But in such cases it is open to the Cabinet to disown a ministerial decision; and then the minister concerned alone will resign. The Cabinet disowned Sir Samuel Hoare's pact with Laval in regard to Abyssinia with the result that when Parliament disapproved it, he alone resigned his post as Foreign Secretary. Earlier Sir Austin Chamberlain had to resign his post as Secretary of State for India in 1917 because of the findings of the judicial enquiry into the conduct of the Mesopotamian campaign. Mr. Montagu also had to go because he published a telegram from the Government of India without consulting the Cabinet. Individual responsibility is thus quite compatible with collective responsibility.

In his *Thoughts on the Constitution* Amery puts a new meaning upon the term 'responsibility'. According to him it connotes 'a state of mind which weighs the consequences of an action and then acts, irrespective, it may be, of the concurrence or approval of others.' He thinks that the strength of the British system follows from the fact that it encourages and fosters responsibility in this higher sense alike among the government benches and the opposition. The responsibility of the Opposition is no less than that of the Government; on the former rests the main responsibility for what was once the critical function of Parliament as a whole.

This principle of ministerial responsibility, particularly of political and collective responsibility, is one of the most important contributions of Great Britain to the art and science of government and constitutes the essence of the British system. It is, however, not a matter of constitutional law as it is in France and other countries ; it is grounded wholly on usage or convention. It may also be pointed out that collective responsibility is ultimately rooted in the party character of the Cabinet. It is indispensable for the smooth and proper working of the cabinet system in so far as it begets mutual confidence and that 'give and take' in the shaping of policy without which unanimity of decision is impossible.

(*g*) *Secrecy of Cabinet Proceedings.*— Closely connected with the doctrine of collective responsibility of the Cabinet is the fact of its being a secret committee. The Cabinet conducts its deliberations in private and throws a veil of secrecy over them. Every cabinet-minister has to take an oath before the Privy Council that he would not disclose cabinet secrets to any one. There is also the Official Secrets Act to bind him. But perhaps the rule is observed more because of its practical utility. For its efficient working the Cabinet system demands that the differences between members of the Cabinet shall not be made public. If the Cabinet is to present a united front to the King on the one side and to Parliament on the other ; and if, above all, its collective responsibility is to be maintained, it is absolutely necessary that what transpires behind the scene should not be made public. If every statement made by a minister were to become public, there could be no free discussion. The rule of secrecy is, however, not absolute. When a minister resigns because of a serious difference of opinion with his colleagues or with the Prime Minister, and desires to offer explanation on the floor of the House, some cabinet secrets are generally made public. When cabinet proceedings pass into history, the rule is waived.

The observance of the rule forbids the members to take down notes of cabinet proceedings. It is only the Prime Minister, and now the official Secretary of the Cabinet also, who are authorised to prepare notes. The Prime Minister may give to the Press an official summary of important cabinet decisions.

Attention may also be drawn to another feature of the system. The Cabinet is not something separate from the legislature but may

be regarded as 'an integral and living part' of it. It is the British Parliament which gives life to the British Cabinet; withdrawal of its support would mean the resignation of the latter. This constitutes the fundamental difference between the British and American systems. It is however wrong to describe the Cabinet as a committee of the legislature. It is appointed not by Parliament but by the Monarch.

We may sum up the preceding discussion and state that the following are the main characteristics of the Cabinet system as it operates in Great Britain :— Independence of royal support; leadership of the Prime Minister; the party character of the Cabinet and its homogeneity, solidarity and unity; its collective responsibility and accountability before the House of Commons; and lastly, the secrecy of its proceedings. Not all these features are found in France and other countries which have adopted it, because the peculiar conditions prevailing in the country of its birth are not found there.

Functions of the Cabinet.— The pivotal position occupied by the Cabinet in the British system has already been indicated in an earlier section. Different writers have used different phrases to highlight it. For example, Lowell calls it 'the keystone of the political arch'; Sir John Marriot describes it as 'the pivot round which the whole political machinery revolves'; Ramsay Muir speaks of it as 'the steering wheel of the ship of the state'; and Bagehot refers to it as 'the hyphen that joins, the buckle that binds, the executive and legislative departments together'. Recently, Amery has referred to it as 'the central directing instrument of government'; according to him it is a fundamental error to think that the British system is a parliamentary democracy in the sense that in it the government is a Parliament which uses the Cabinet as a kind of executive committee as was the case in the Third and Fourth French Republics; what they have in Great Britain is government by the Cabinet with the assent, but not under the direction, of Parliament. As has been pointed out before, in the British system the Crown is still the active and originating element in government. At the present time the supreme directing and controlling function of the Crown is performed by the Cabinet headed by the Prime Minister, and not by the reigning monarch as was the case upto the eighteenth century. In other words, though formally and technically the Crown is the chief executive authority in Great Britain, for all practical purposes the

Cabinet is the principal instrument of executive power and coordinator of administrative action. The phrases coined by Lowell, Ramsay Muir, and Amery thus correctly describe the role of the Cabinet in British political life.

As the principal instrument of executive power the functions of the Cabinet are numerous and varied. They are best summed up in the Report of the Machinery of Government Committee, popularly known as the Haldane Committee of 1918. This Report described the main functions of the Cabinet as under :

(*i*) The final determination of the policy to be submitted to Parliament.

(*ii*) The supreme control of the national executive in accordance with the policy prescribed by Parliament.

(*iii*) The continuous coordination and delimitation of the activities of the several departments of the state.

Of these three broad functions, the first is easily the most important. It makes the Cabinet the supreme policy-formulating organ and the general controlling body in the state. It puts on the Cabinet the responsibility of determining the lines of national policy in both domestic and foreign spheres, and deciding how the various national problems, which arise from time to time, are to be dealt with. When it has determined national policy and arrived at the solution of each current problem, it submits its decisions to Parliament if they stand in need of its approval; otherwise the decisions are communicated to appropriate departments for necessary action or to the Privy Council for giving effect to them by means of Orders-in-Council. It ought to be borne in mind that the Cabinet is a policy-framing and not an administrative body. It cannot do anything itself or order any body else to do it ; it does not itself execute the policy it determines, or adminiter the affairs of the state. All that it can do is to formulate the broad lines of policy and draw up a legislative programme to give effect to it. This legislative programme is usually set forth in the Speech from the Throne delivered by the Monarch on the opening day of every parliamentary session. This Speech is prepared by the Prime Minister.

One important consequence of the way in which the legislative programme of the government is implemented is to make legislation

an integral part of the functions of the Cabinet. Members of the Cabinet initiate, introduce, explain, defend and push through Parliament legislative measures on all sorts of subjects. It is no exaggeration to say that nowadays it is the Cabinet which legislates with the consent and approval of Parliament. The same remarks apply to financial measures. Though in theory it is the function of Parliament to decide what taxes are to be levied and what sums of money collected, and how they are to be spent, what happens is that Parliament simply dittos the decisions arrived at by the Cabinet. In short, legislation, financial as well as ordinary, has been annexed by the Cabinet. Most of the time of Parliament is taken up by measures introduced by the Government

Though the Cabinet is the supreme policy framing organ in the State, the decisions it arrives at on important issues cannot become effective unless they are submitted to Parliament and approved by it. The presentation of policy in Parliament, answering questions, and the securing of passage of needed legislation constitute integral parts of the Cabinet's function. It is no doubt true that a modern government finds it easy enough to secure the passage of its measures through Parliament because of its comfortable majority there; nevertheless, it cannot afford to adopt a rough and high-handed attitude towards Parliament. The public would greatly resent it. Moreover, through discussions in Parliament, the Cabinet expounds its policies before the country.

Besides determining the lines of national policy and deciding how every current problem that arises is to be dealt with, the Cabinet is responsible for seeing that proper effect is given to these policies by the various administrative agencies. The Cabinet is responsible for the smooth and efficient working of national administration; it has to look to every detail of the administrative work carried on by the vast administrative machine. This it does through the various administrative Departments of the state over every one of which one or the other Minister presides. The Cabinet is not an administrative organ; its members have the duty of supervising the work of administration carried on by the permanent civil servants in the numerous departments. This accounts for the third broad function of the Cabinet as referred to by the Haldane Report; namely, the continuous coordination and delimitation of the activities of the several depart-

ments of the state. Because of their pre-occupation with political work in the House of Commons, ministers find it difficult to devote enough time to their administrative duties, and have necessarily to depend upon the civil service staff working under them. This led Professor Ramsay Muir to indict Cabinet for having arrogated to itself 'a series of colossal responsibilities which it cannot meet, which it will not allow Parliament to tackle, and which are not met at all except in so far as they are assumed by the bureaucracy behind the cloak of Cabinet omnipotence.'

There is no doubt that the powers of the Cabinet have grown tremendously during the last half a century and more. The increase is not peculiar to Great Britain ; the executive branch has grown in power all the world over. This growth was most noticeable during the period of the two World Wars ; the growth of the idea of social service or welfare state has also been greatly responsible for it. The American Presidency is far more powerful today than it was before Word War I ; the scope of the Swiss Federal Council also has expanded vastly as a result of the two wars, even though Switzerland was not directly involved in either of them. Nonetheless, the way in which the British Cabinet has grown powerful *vis-a-vis* Parliament and has come to guide and control the work of the latter in the sphere of legislation and finance is unmatched in other European countries. It is practically responsible for all legislation, for the detailed preparation of practically all legislative measures submitted to Parliament. It is also responsible for determining what revenues are to be raised and in what manner, and how they are to be spent. The budget is always discussed by the Cabinet before it is presented to Parliament. Initiative in financial matters thus lies solely with it. Lastly, the Cabinet makes appointments to practically all the great offices of the state both inside and outside Great Britain in the Empire. But as we have pointed out in a different context, political patronage and the award of titles and honours are in the hands of the Prime Minister.

It is thus obvious that, though having no basis in the law of the Constitution, the Cabinet is in fact the seat of the motive power and source of initiative in the government. The ultimate decision on all questions of policy rests with it. Conclusions reached in its meetings are binding upon all members of the ministry and also on all

the state departments. It is the bounden duty of the state departments and the civil servants working in them to implement them.

Bagehot's famous description of the Cabinet as 'the hyphen that joins, the buckle that fastens, the executive and legislative departments together' draws attention to another highly vital and important aspect of its activities. The Cabinet stands between the Monarch and Parliament, and not only brings the executive and legislative organs into a close and intimate contact to which there is no parallel in the presidential system of government, but also provides Parliament with leadership. It ensures that the functions of government are exercised by a small body of persons who, though formally appointed by the Monarch and dismissible by the same authority, are politically responsible to the electorate through the House of Commons. Their views are in harmony with the views of the majority in the House of Commons. We may therefore say with Professor Harold J. Laski that the chief function of the Cabinet is to govern the country 'in the name of the party or parties which provide it with a majority in the House of Commons.' It pushes 'a stream of of tendency through public affairs by obtaining for its decisions the approval of the sovereign Parliament.'

Cabinet Meetings and Committees.— The meetings of the Cabinet are generally held at 10 Downing Street, the official residence of the Prime Minister with the Prime Minister in chair. There are no rules of order and no fixed quorum, and discussion tends to become rather informal and conversational in nature. Except when there are fundamental differences, decisions are not sought to be arrived at on the basis of majority vote. Efforts are made to secure almost unanimous agreement through mutual give and take. As a writer puts it, compromise is the first and last order of the day. The Cabinet ministers thus talk round the subject until some compromise suggests itself.

The agenda for the meetings is prepared by the Prime Minister. But it should be borne in mind that in a large measure it is external forces which determine what the Prime Minister shall place before the Cabinet. The House of Commons can compel the Cabinet to discuss a matter by making enough fuss about it ; and public opinion also can sometimes force it to consider matters which it deems urgent. Some questions arise because of action taken by some

foreign power. In short, questions are thrust upon the Cabinet by the logic of events in the country and outside.

Like other bodies the Cabinet also has found it necessary to make use of committees to help it discharge its responsibilities. But no regular and fixed committee system can be said to have developed ; special ad hoc committees are set up to deal with special problems. Two committees, the Legislation Committee, formerly known as the Home Affairs Committee, and the Finance Committee are however permanent. Mention may also be made of the Committee of Imperial Defence which is technically not a Committee of the Cabinet, but functions as such. It is presided over by the Prime Minister. Dominion representatives are sometimes invited to attend it.

The Cabinet Committees serve several purposes. They provide a valuable means for the study and discussion of important problems. Ministers most concerned with them who do not happen to be members of the Cabinet can be invited to serve on them. Cabinet discussion of such problems is very much facilitated by the fact that they have been fully thrashed by a smaller group. The Committees usually arrive at substantially agreed recommendations. In case there is a difference of opionion in regard to some aspect, the matter is deal with by the Prime Minister. The Committees are also useful for coordinating policy and administration ; the political, social, economic and administrative aspects of the various problems are discussed by ministers concerned and ways found to avoid conflicting or duplicating programmes. Committees are also helpful in keeping critical problems under continuous review.

Reference may also be made to the fact that until 1917 no official records of Cabinet proceedings and decisions were kept. No member except the Prime Minister could take any notes of the proceedings, and he, too, for the purpose of informing the King or for his own guidance. It was during the First World War that Mr. Lloyd George broke the tradition and appointed a Secretary to the Cabinet to keep a record of its decisions. The practice was found to be useful, and now a regular Cabinet Secretariat exists. Attention may also be drawn to a new phenomenon, namely, the growth of what is generally called the 'Inner Cabinet'. Several causes have led to this interesting development. The increase in

the size of the Cabinet is partly responsible for it; the necessity of expediting business in a Department may also lead the Minister to consult the Prime Minister and arrive at a decision without referring the matter to the Cabinet even though the matter may be important. The most important cause is, however, to be found in the fact that every Cabinet generally contains four or five persons of outstanding ability, experience and personality whom the Prime Minister generally consults on important matters. They constitute the inner council which gives direction to the policy of the ministry as a whole. The War Cabinets formed during the two World Wars were something like the Inner Cabinet for the conduct of the War. Some observers welcome the growth of the Inner Cabinet as leading to a degree of integration impossible in the case of a big Cabinet, while others criticise it for having decreased the prestige and importance of other members. It is thus not an unmixed good.

Is the Cabinet Machinery Adequate?— We have seen that the responsibilities which the Cabinet has to shoulder and the functions it has to perform are very onerous. The question has sometimes been asked if its normal machinery is adequate for the purpose; whether it can bear the stress and strain involved in meeting international crises and solving highly complicated problems of social and economic reconstruction in England and in the Empire? It has been alleged that, consisting as it does of overworked departmental Ministers, it is quite incapable of thinking out a definite policy or of securing its consistent execution. In the words of Mr. Amery 'Every Cabinet meeting is a scramble to get through the agenda in which the competition of departments for a place is varied by the incursion of urgent telegrams from a broad or of sudden questions in the House of Commons for which some sort of policy or answer must be improvised. The one thing it hardly ever discusses is general policy. Nothing indeed is more calculated to make a Cabinet Minister unpopular with his colleagues... than a tiresome insistence on discussing general issues of policy... The result is there is very little Cabinet policy, as such, on any subject. There are only departmental policies... The whole system is one of mutual friction and delay with, at best, some special measures of mutual adjustment between unrelated policies. It is quite incompatible with any coherent planning of policy as a whole, or with the effective execution of such a policy. It breaks down hopelessly in a serious crisis where

clear thinking over difficult and complex situations, definite decisions and swift and resolute action are required.'*

There is a good deal of truth in the charge levelled by Mr. Amery. Professor Ramsay Muir also arrived at a similar conclusion ; in his *How Britain is Governed*, he thought that the Cabinet had arrogated to itself colossal responsibilities which it could not meet properly. Mr. Amery's suggestion that a separate policy department should be created whose sole business must be to give forethought to matters and plan effectively seems to be a sound one. The Cabinet may be left with the business of doing things that must be done to carry on the work of administration and give effect to policies decided upon by the organ to be set up. It should be the duty of the new organ to devise what ought to be done ; *i. e.*, to think of future needs and plan for them. Members of the new body should be wholly free from departmental duties.

Powers and Functions of the Prime Minister.— From an account of the nature and functions of the Cabinet which is the pivot round which the whole machinery of government revolves, we now came back to the Prime Minister whom Gladstone once described as the 'key-stone in the Cabinet arch'. He is something more than this ; he is, in fact, though not in law, the political ruler of England, the head of the administration in the state. Even though his powers have not been legally defined anywhere, he is 'endued with such a plenitude of power as no other constitutional ruler in the world possesses, not even the President of the United States. For, so long as his party commands a majority in the House of Commons, he can do what no President can ever do— he can give a pledge beforehand that such and such a treaty will be signed and ratified, that such a law will be passed, or that such and such moneys will be voted by Parliament.'†

We have noted already the powers he exercises as the leader of the Cabinet. With the King's consent he appoints and dismisses ministers, and assigns portfolios to them. He settles differences between departments and irons out the difficulties arising between ministers. He is constantly consulted by ministers on the major problems of their departments and can claim to be thus consulted.

* Amery : *Thoughts on the Constitution*, page 87.

† Ramsay Muir : *How Britain is Governed*, page 83.

It is, however, impossible for him to keep in touch with the work of every department; the functions of government have become too vast. All he can hope to achieve is to see that the ministers loyally carry out the policy of the Government, and take no liberties in determining what the policies of their departments would be. He has a decisive voice in all important Crown appointments; *e. g.*, the Governor General of India prior to 1947, the Governors of colonies, and thus has a wide patronage. He keeps an eye on all departments and is responsible for seeing that they carry out Cabinet decisions. He is the channel of communication between the Cabinet and the Monarch, and is in direct communication with the Prime Ministers of the Dominions. He sets up bodies like the Committee of Imperial Defence and Economic Advisory Council and presides over the meetings of the former and at Commonwealth Conferences. He sometimes receives foreign ambassadors and sometimes represents the British Government at International Conferences. He is the leading figure in the House of Commons and is expected to speak on behalf of the Government on all important measures and problems. He answers questions on general policy in the House of Commons. He has a large share in the making of foreign policy also. He is the leader of his party and in that capacity controls the central party machine, and takes prominent part in political propaganda.

It would be easier to remember and understand the many-sided powers of the Prime Minister if we bear in mind that he is (*i*) the key-stone in the Cabinet arch, central to the formation, life and death of that supreme controlling authority; (*ii*) the leader of the House of Commons; (*iii*) the confidential advisor of the Crown in a special degree and the link between the Monarch and the Cabinet; and (*iv*) the indirect nominee of the electorate. He occupies the key position in the governance of the country and may well be regarded as the sun round which the various planets of the constitutional system revolve. Recent developments have generally tended to increase his authority. But two things must be remembered in this connection. Firstly, the office of the Prime Minister is what 'the holder chooses to make it and what the other ministers allow him to make of it'.* In other words, his powers and authority to a large extent depend upon his own personality and prestige and his relations with

* Jennings: *The British Constitution*, page 159.

his colleagues. Dominating personalities like Disraeli, Gladstone, Peel and Churchill make strong prime ministers whose authority can be challenged by few colleagues. Secondly, as has been pointed out already, his powers can be exercised only in the context of party structure. It is the leadership of the party which has a majority in the House of Commons that gives him the power and authority he possesses. If the party loses its majority or revolts against his leadership, all his authority melts away. This implies that, great though his powers may be, he has to secure the collaboration of his colleagues in their exercise. He cannot afford to act like an autocrat. In this respect he compares rather unfavourably with the President of the United States. There are, however, some functions in the performance of which the Prime Minister does not usually consult his colleagues in the Cabinet; he discharges them personally and by himself. These include the exercise of the royal prerogative of mercy, the award of titles and honours, and since 1918, the dissolution of Parliament. There is nothing to prevent him from bringing any of these matters before the Cabinet if he so likes; but he does not usually consult it. But though he decides such matters himself, he usually does not take any important decision without consulting the five or six leading members of the Cabinet who may be his trusted advisers and who may be said to constitute the Inner Cabinet.

Finally, we may note a characteristically British anomaly. Inspite of their being the real controlling factors in the British constitutional machine, the Prime Minister and the Cabinet were not known to the law of the constitution till recently. In its eyes the Cabinet was an unofficial and informal assembly of a number of the ministers of the Crown whose decisions had no legal effect until they obtained parliamentary approval or were endorsed by the Privy Council. The Prime Minister did not draw salary as Prime Minister but as the First Lord of the Treasury or in some other capacity; he had no statutory duties as Prime Minister, and his name did not occur in Acts of Parliament. His position in the table of social precedence was not recognised till 1905. The captain of a guardship wanted to show honour to the Prime Minister by a salute of guns when he visited Clyde in 1863. But the naval code did not recognise the Prime Minister. The captain found a way out of the difficulty by honouring him as the Lord Warden of the Cinque Ports. Truly did Gladstone remark that nowhere in the wide world 'does so great

a substance cast so small a shadow ; nowhere is there a man who has so much power, with so little to show for it in the way of formal title or prerogative.' The Ministers of the Crown Act of 1937 alters the situation to a certain extent.

The Monarch and the Cabinet.— It has been pointed out already that in the parliamentary system such as prevails in Great Britain, the formal executive must be distinguished from the real. While the Monarch is the formal executive, the Cabinet is the real or political executive ; the latter really governs the country. We have described the powers and functions of the Monarch and also those of the Cabinet in the preceding pages ; it now remains to determine the relationship between them.

It is a fundamental principle of the British Constitution that the King or Queen can do no right or wrong. The responsibility for all the public acts done in the name of the Crown is of the ministers and not of the King or the Queen. This is rendered possible by the fact that the King or Queen stands outside the Cabinet ; he or she does not attend its meetings and therefore does not make any direct contribution to its decisions. It is the Cabinet which formulates the policy and arrives at a decision on each current problem, and the Monarch has to accept that policy and the decision. It is of course true that the Monarch may try to persuade his ministers to abandon a policy of which he does not approve, but if the ministers stand their ground and refuse to accept the royal advice, the King must yield. In other words, the King is constitutionally bound to act on the advice of his ministers. Nevertheless, a wise and industrious monarch can wield considerable influence in the determination of state policies. He is in constant touch with the Prime Minister and is kept informed by him about the vital aspects of policy. He can see other ministers also, and has other sources of information. He has the right to see important despatches in all departments and to comment upon them. He can demand that no new policy should be adopted in any department without his first being informed about it, and that the questions to be discussed by the Cabinet be sent to him before decisions are taken. He has a right to comment on them and to demand that his opinions be placed before the Cabinet before a decision is taken. He can raise a question which, in his opinion, should be submitted to the Cabinet. In these

ways he can exert some influence on the course of events. The efficacy of this influence depends partly on the character of royal criticisms and proposals, and partly on the degree to which they are in harmony with the political philosophy and policy of the party in power. In the light of documents which have been published it can be said that the British monarch is far from being a negligible factor in the determination of state policies. As has been stated previously the exalted position of the King, his long experience and knowledge of men and things combined with his apparently non-partisan character give his advice a weight that cannot be lightly disregarded. The power of the King in relation to the Cabinet is quite real. Though standing outside the Cabinet, he is virtually its member, and what is even more important, the only non-party member. This vests his views with great value.

The Cabinet and Parliament.— The Cabinet stands in close relation not only to the Monarch but also to Parliament. Its relationship to Parliament supplies an extremely interesting example of the wide divergence between theory and practice which is one of the most distinctive features of the British constitutional system. According to the legal theory of parliamentary government Parliament, which in practice means the House of Commons, is supreme. For everything which the ministers do, for every advice which they give to the Crown, individually as well as collectively, they are accountable to the House of Commons. The Cabinet governs the country, but subject to the control and supervision of Parliament. It cannot raise a penny by way of taxes, and it cannot spend a single farthing on any item without the explicit consent and approval of Parliament. It cannot declare war or make peace without parliamentary approval. The very life of the Cabinet depends upon the will of the House of Commons. A displeased or censorious House can dismiss a ministry. No Cabinet can remain in office if the House censures it or refuses to pass a measure considered important by it. The Cabinet can govern the country only so long as the House of Commons continues to give approval to its acts and policies. Nothing more is needed to demonstrate the supreme and authoritative position of Parliament. Those who, like Gladstone, find in the House of Commons 'the solar orb round which the other bodies revolve' are, in legal theory, on very sound ground.

In actual practice, however, the things are the other way about. Instead of being its obedient servant, yielding to its slightest wishes, the Cabinet has become the master of the House of Commons and controls it to an extent unknown in any European country having the same type of government. The growing dominance of the Cabinet over the House of Commons is perhaps the most remarkable single constitutional development in Great Britain during the last sixty years or so. It is no longer the House of Commons which makes or unmakes the ministries; no Cabinet has been thrown out of the office by it during the last eighty years or so. A government possessing a real majority in it can be reasonably certain of maintaining itself in power so long as Parliament endures. It is the electorate rather than their elected representatives in Parliament who decide whether the Labour party or the Conservative party is to be entrusted with the responsibility of administering the affairs of the State. Again, it is the electorate and not Parliament to whom the Cabinet looks for approval of its policies. Parliament is simply the medium through which the decision of the electorate is given shape.

One important consequence of this decreasing control of Parliament over the Cabinet and the increasing powers of the latter is that the ministers take their cue from what appears to be public opinion to them and ignore or take lightly the criticisms made by the members on the floor of the House. Rebuffs which might have caused a political sensation in the past are now taken lightly.

In yet other ways the House of Commons has lost ground to the Cabinet. The role played by the latter in legislation has become so vital and important that a writer has been led to remark that today it is the Cabinet which legislates with the approval of the House of Commons. There is hardly any exaggeration in this statement. The Cabinet has assumed entire control over legislation. Every important bill introduced in Parliament comes with the imprimature of the Cabinet and is usually fully discussed by it before being introduced. No measure to which the Cabinet is opposed can be successfully piloted through the House of Commons. The same is the case in the sphere of finance where the control of the Cabinet has become almost complete. As will be shown later on, Parliament has no power to propose any new item of expenditure or increase the amount demanded by the government; it cannot propose any new tax or add to the amount proposed by the government. Though

theoretically it remains true that the government cannot spend a penny without parliamentary approval, as a matter of fact the control of the House of Commons over expenditure has been reduced to almost zero point and millions of pounds are voted by it without any discussion. In the matter of voting on taxes the House can exercise control to the extent permitted by the Cabinet. Similarly, the control of Parliament over administration has become ineffective. These points will be elaborated in another chapter. What has been said is sufficient to show that the House of Commons is no longer the master of the Cabinet but has become its servant. The causes of this remarkable phenomenon will be discussed elsewhere.

Chapter V

THE PERMANENT EXECUTIVE

The Civil Service and Administrative Departments

Introductory.— The supreme executive, even though it may consist of men of extraordinary ability and knowledge, cannot carry on the administration without the help and co-operation of an army of trained and experienced civil servants. A country's administration is run, not by the members of its Cabinet, but by a number of Departments manned by members of the Civil Service. In Great Britain the day-to-day enforcement of the country's laws is directed by the great administrative departments like the Treasury, the Home Office, the Foreign Office, the Boards of Trade, Agriculture and Education. In other words, we can say that the Cabinet governs the country with the help of persons who occupy leading posts in the civil service and man the various administrative departments of the State. Therefore a few words about the British Civil Service and the Departments would form a useful supplement to the account of the formal and the political executive as contained in the two preceding chapters.

Main features of the British Administrative System.— Before proceeding with an account of the Civil Service and the enumeration of the main departments it seems desirable to refer to some of the distinctive features of the British administrative system. It has become almost customary to contrast the great heterogeneity which characterises the British Departments with the great uniformity which is an important feature of the American and French systems. In the United States of America the ten regular executive Departments stand on a common footing; they have been created by Acts of Congress, though at different times, and are presided over, each by a single chief known as the Secretary (except in two cases, the Post Office Department and the Department of Justice). They also stand in the same relation to the President and to Congress. The British Departments, presided over by members of the Cabinet, on the other hand, show no uniformity; they are called by different names and do not stand on a common footing. They were created in different ways.

Some of them are called 'Offices'; *e. g.*, the Home Office and the Foreign Office and are presided over by Secretaries of State; others are called 'Ministries'; *e. g.*, the Ministry of Health, and are headed by Ministers. Others are called Boards, *e. g.*, the Board of Trade, and are headed by Presidents. Some of them are survivals of offices which functioned in times gone by, *e. g.*, the Treasury; some have sprung from Committees of the Privy Council, *e. g.*, the Board of Education; and some have been created by Acts of Parliament. The English Departments are thus extremely heterogeneous; it is impossible to give a general description that shall apply to all of them. They also do not stand on the same footing; the Treasury exercises a great measure of control over the other departments. Again, departments differ in their status: the political chiefs of some are always members of the Cabinet; those of thers, usually not. The Treasury, the Defence Office, the Admiralty, Home Affairs, Foreign Affairs are examples of the former; the Department of Pensions and the Law Officers (Solicitor General and Attorney General) illustrate the latter.

The absence of uniformity and equality is, however, not the most significant or fundamental feature of the British system; it entails no important consequences in the theory or practice of government. Far more vital is the association of the layman and the expert, of the political or parliamentary chief and the permanent officials. According to President Lowell, one of the most deserving of political traditions in England is that which governs the relation between the expert and the layman. It is necessary to understand what this means.

In every department there is a political chief or head assisted by a political under-secretary. The two constitute the lay or amateur element in it. They form part of the ministry. Besides them there are two or three (sometimes even more than three) *permanent* under-secretaries, a larger or smaller number of secretaries, counsellors, chiefs and assistants, legal advisers and a host of clerks. They are experts and belong to the permament Civil Service. The two parts have different functions to perform. The minister lays down the policy of the government and determines its objects— in consultation with the Cabinet whenever important issues are involved. It is the business of the permanent under-secretaries, chief and assistant,

and other senior civil servants in the department to give expert advice as to the best way of giving effect to the policy and achieving the objects of the government. According to strict theory it is no concern of theirs to formulate the policy or anywise to control it; their business is to translate into action whatever policy is decided upon by the political head.* They also supply to their chief much knowledge and experience in the absence of which an intelligent formulation of policies and enactment of legislation by the Cabinet and Parliament would be almost impossible. The permanent Civil Service thus makes government *efficient*; the presence of the political head responsible to Parliament serves to make it democratic. The essence of the British scheme is to make administration at once efficient and democratic or popular.

The Royal Commission on the Civil Service sums up the principle of the relation between the Civil Service and the Ministers thus:

'Determination of policy is the function of the ministers and once a policy is determined it is the unquestioned and unquestionable business of the civil servant to strive to carry out that policy with precisely the same goodwill whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of civil servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether this advice may accord or not with the minister's initial view. The presentation to the minister of relevant facts, the ascertainment and marshalling of which may often call into play the whole organisation of the department, demands of the civil servant the greatest care. The presentation of inferences from the facts equally demands from him all the wisdom and all the detachment he can command. The civil servant influences policy by advising the minister and putting before him his own views.'

It is easy enough to see how the Civil Service supplies the element of expert knowledge and trained experience. Entrance to it is regulated by competitive examinations which attract the best products of the British Universities. Promotion is determined by seniority and merit; a really intelligent and hard-working individual can easily work his way up to the highest office, the permanent under-secretaryship. Long years of service and experience in the same department make him an expert; his opinions and

* They however contribute to policy-framing indirectly. According to Ramsay Muir growth in the powers of the bureaucracy is one of the most outstanding phenomena in British political life.

suggestions command consideration by the minister who, more often than not, is new to the department. But what is meant by calling the political chief of the department an amateur or layman? He is an amateur in the sense that his appointment as the head is not based on any technical qualifications or special knowledge pertaining to the department; it is determined by considerations which generally have little bearing upon the nature of the special work he would be called upon to do in his particular department. Naval experience is not a requisite qualification for appointment as the First Lord of the Admiralty; on the other hand, it would be a disqualification. One does not look to experience as a farmer in the Minister of Agriculture; the Minister for Industry may be a lawyer; and the Defence Minister a man of peace. All this is due to the fact that according to a well-known saying it is not the business of a Cabinet Minister to work his department; his business is to see that it is properly worked. This he does by framing the general policies (under the control of the Cabinet) and seeing that they are carried out by the permanent staff employed in his department. It is also his business to see that the latter do not do anything which the public would not stand, that the administration of the department does not run counter to public opinion. What is thus required of a minister is not knowledge of details or technical skill but a broad vision and sympathetic outlook which may enable him to see the department as a whole and appreciate its relationship to other departments and to public opinion. He must possess general knowledge, tact and a sense of values, and should be able to win the loyalty and obedience of those who work under him. He should be a man of sound commonsense and intelligence. 'His first quality is commonsense; his second the art of judging men. He must know how to give orders, and to see that they are obeyed.'*

The Civil Service.— As has been pointed out above, the permanent Civil Service plays a vital role in administration. It provides the indispensable machinery by which effect is given to the policies of the government and the laws of the land enforced. Without it, government would be a mere collection of rules and regulations without any effect upon the people. It also collects relevant facts and information on which the minister bases his decisions and poli-

* Laski: *op. cit.*, page 289.

cies. It is thus the hands, the eyes and the ears of the government. A sound and efficient civil service is as necessary for realising the purposes for which government exists as an intelligent and patriotic policy-framing supreme executive.

But if the civil service is to play its part well, it must attract and be manned by right sort of persons— by men of ability, intelligence and character. Admission to it must be on merit; jobbery, favouritism and nepotism must not be allowed to influence the selection of candidates. Entrants to it must be guaranteed security of tenure. This in turn necessitates that the members must be non-partisan; they must stay away from politics and be loyal to whatever party is in power and render equally good service. These requirements have not always been fulfilled in Great Britain. In the 18th century a large proportion of civil service posts were filled with the relatives, dependents and friends of ministers. Public work was entrusted to incompetent hands and a change of government was sometimes followed by a re-staffiing of the various departments. But to-day it is all changed. Persons enter the different grades of the Civil Service through competitive tests; and once there, continue in it all their lives. Promotion takes place in accordance with seniority and merit. Members of the permanent services are not allowed to stand at any election or to take active and open part in political activities or discussions. This is insisted upon with a view to the maintenance of their non-partisan attitude. It has become a tradition in Great Britain that the permanent Civil Service would serve a Labour Government as efficiently and willingly as a Conservative or Liberal Government. A change of government does not affect the fortunes of its members; their service is *non-political*. Aloofness from politics is one of the conditions of permanent tenure in the country. It is not necessary to trace the steps through which the present condition has been reached.

The Role of the Civil Service.— The theory of the relationship between the political chief of a department and the permanent civil servants as sketched above does not correctly and adequately describe the actual role played by the professional administrator in the British system. It is no doubt true that so long as the permanent staff employed in a department carry out the work assigned to them by the minister, they cannot be publicly criticised for its effects: censure

and praise for the work done are the lot of the politician and not that of the professional administrator. But from this it would be wrong to conclude that the latter does not influence government policy at all. As a matter of fact, the Civil Service wields great power not only in administration but also in legislation and finance, though, on account of the theory of ministerial responsibility, it does not receive public recognition. In this connection it should be remembered that the business of a civil servant is not merely to do what he is told; it is his right and duty to place before the minister all the knowledge and experience he has acquired whether it agrees or not with the minister's view. The minister is bound to take into consideration all the information placed before him by his subordinates before giving final instructions to them. It is in this way by supplying the relevant information that the civil servant influences policy. In so far as the exercise of this power is not sufficiently controlled either by the Cabinet or by Parliament, an element of *bureaucratic* government may be said to enter the British system. It is interesting to see how the phenomenon has come to pass.

On account of its security of tenure and the method of recruitment by competitive examination, the British Civil Service attracts the best and the ablest products of the British Universities; and power always goes to ability. The minister owes his position to his achievements in the general field of politics; he is not put in charge of a department because of any special knowledge of its working or problems. The permanent secretaries, under-secretaries, legal advisers, chiefs and assistants working under him possess a far deeper knowledge of the immense and complex work of the department than he has. The minister is very well aware of this fact; it makes it difficult for him to override their opinions and the arguments by which they are supported, unless he be a man of exceptional grasp, ability and courage or a self-conceited fool. The consequence is that in a great majority of cases the minister accepts the views of his official subordinates and signs his name on the dotted line. 'On the whole the policy of "the office" will nearly always prevail. Its powers of quite persistence and of quiet obstruction, and its command of all facts, are irresistible except to a man of commanding power.'* The generous intentions of many a well-meaning minister are foiled and set at naught by "officialdom". India Office, the

* Ramsay Muir : *How Britain is Governed*, page 56.

Foreign Office, and the War Office can easily provide illustrations. It does not mean that the influence of the permanent officials is always negative in character, taking the form of denying or modifying new proposals; they are many examples of positive activity. The reports of factory inspectors appointed by the Central Government contained valuable information which supplied the foundation of improved factory legislation. What is necessary to understand is the fact that 'over the field of central administration taken as a whole, the continuous and persistent influence of the permanent Civil Service is the dominating fact.'*

The influence of the Civil Service extends to the sphere of legislation also. Legislative measures introduced in Parliament by the Government may be divided into two classes. Some of the measures are designed to give effect to the pledges given to the electorate during election time. The initiative for such legislation and the ideas for it come from the Government. The role of the Civil Service is confined to putting the ideas in the form of a draft bill; and in this process it can sometimes introducc subtle changes. To the other class belong the numerous measures introduced by the Government but suggested by the permanent officials; these may affect the life of the people more than the other measures. Though the credit for passing them goes to the Government, the real responsibility for them lies with the permanent officials. There is also another form of legislation which is almost wholly due to the permanent officials. It is known as 'Administrative Legislation', and has grown in volume in recent years. Quite a large number of Public Acts passed by Parliament contain clauses empowering the minister to issue Orders having the force of law. The Orders are in fact issued by the permanent officials. Sometimes they 'lie on the table', and occasionally they are put into force at once. Even when they 'lie on the table', Parliament seldom discusses them; their submission to it is nominal. Agriculture, industry, poor relief, public health and education are the broad fields where this rule making power is largely used. If all the Orders, Rules and Regulations passed during the last twenty years are collected together, they would fill several large volumes. In one case, the Minister was even given the power to do anything which appeared necessary to him for the given purpose, even if the Order

* *Ibid*, page 58.

issued by him had the effect of *modifying* the provisions of the Act.

In the sphere of finance also the same phenomenon appears. Chancellors of the Exchequer have oftentimes found it impossible to give effect to their general policy of retrenchment on account of the pressure of the Permanent Officials. The Labour Party was pledged to drastic cut in the expenditure on the fighting forces when it formed the Government in 1924. Instead of effecting any retrenchment, it actually increased the expenditure by several millions of pounds. The Treasury has sometimes converted unorthodox Chancellors of Exchequer into exponents of the traditional principles. The instance of Philip Snowden is a case in point.

It will be thus obvious that the Civil Service has become a really operative part of the government mechanism in Great Britain. Its role cannot be limited to merely giving effect to the policies decided upon by the Minister outside its cadre. It has been able to gather a good deal of authority. Its authority is, however, that of influence and not of power. It exercises influence because it alone provides knowledge of facts and consequences on which sound decisions can be based. This does not mean that England has developed a bureaucratic government like the one which existed in our country during the British period. We need not discuss whether the increase in the power of the Civil Service is desirable or dangerous; it is the outcome of certain changes that have come over Great Britain.

Administrative Departments.— It does not fall within the scope of this volume to describe the organisation and working of all or even the more important departments through which the British Government perform the diverse functions normally discharged by civilized governments. It is not even necessary to name all of them. What we propose doing is simply to classify the various activities of the Government and name the departments through which they are conducted.

Maintenance of law and order, conduct of relations with foreign states, defence of the country, and collection of taxes and distribution of money among the various departments are activities which every government must perform. We may call them *political* activities and the departments engaged in them *political* departments. In Great Britain they are the Home Office, the Foreign Office, the Admiralty, the War Office, the Air Ministry, and the Treasury. The Dominion

Office, the Colonial Office, and the India Office (when it existed) may also be regarded as *political*. Although the Treasury has been classed above as a political office, it stands apart from the rest, and can be left out of the classification because it surveys and in a sense controls the activities of all the other departments. Mention may also be made of the Ministry of Pensions which was created in 1916. This department deals with military and naval pensions only: old age pensions and civil service pensions are dealt with by different authorities.

No government these days can possibly confine its activities only to the political functions enumerated above; the days of *laissez faire* are over. Even before the advent of the Labour Government when England was wholly capitalistic and believed in private enterprise, the British Government had found it necessary to regulate, and in some cases to control, the economic activities of the society. Hence there arose departments which may be called *economic*. The chief of them are the Board of Trade, the Ministry of Transport (set up in 1919), the Ministry of Agriculture and Fisheries, and the Ministry of Labour (created in 1914). The Post Office may also be included in the list.

Circumstances similar to those which led to an expansion of state activities from the political to the economic sphere were responsible for a further enlargement of government functions. The evils inherent in capitalism, the growing concern of the State for the welfare of its citizens, and increasing knowledge induced the British Government to introduce what may be called *social services*. They now absorb a large part of the energies of Government, and several departments dealing with them have come into being. The Ministry of Health and the Board of Education are the most important of them, with the Ministry of Labour forming as if it were a link between them and the economic departments. The original function of the Ministry of Labour was to preserve good relations between the employers and the employed, but now it devotes a good portion of its time and energies to the social duty of providing work for the unemployed. The Ministry of Health was created in 1919. It also deals with Health Insurance and Old Age Pensions. The Board of Education was set up in 1899. The realisation of the truth that free government needs intelligent citizens is likely to raise the importance and significance of this department.

Before concluding this short review of the principle administrative departments it seems desirable to call attention to a few other offices the political heads of which are invariably members of the Cabinet. They are (*i*) the Chancellor of the Duchy of Lancaster (he is sometimes included in the Cabinet for personal and not for administrative reasons ; he is sometime given important assignments.) (*ii*) the Lord Chancellor (he presides over the House of Lords, and is the Head of the Judiciary and as such persides over the Judicial Committee of the Privy Council ; sits as a member of the High Court of Justice, and is a Cabinet Minister. He performs important functions in the administration of the Church of England.) (*iii*) the Lord Privy Seal (he is usually a very distinguished member of the government), and (*iv*) the Lord President of the Council, who is the official head of the Privy Council and once exercised many important functions. These offices are neither political, nor economic, nor social.

Chapter VI

PARLIAMENT: THE HOUSE OF COMMONS

Introductory.— We now turn to a study of the second great branch of the British Government, namely, Parliament to which the Cabinet stands in a very close relationship. What prevents the British system from degenerating into despotic rule of the Cabinet and keeps it on the democratic path is the role played in it by Parliament, particularly by the House of Commons.

The British Parliament is the oldest in the world; it is also the largest and the most powerful. Its antiquity is aptly suggested by the famous description of it as 'the Mother of Parliaments'. Its progeny has spread everywhere on our globe where democratic institutions have come into existence. It is the largest legislative body in the world; nowhere does parliament contain a greater number of persons than the House of Commons, and the House of Lords taken together. The Supreme Soviet of the Nation is a slightly larger body than the House of Commons. Its most distinctive feature, however, is its unlimited jurisdiction and power. There is no subject on which it is not competent to legislate and there is no higher human authority which sets limits to its law-making powers. It is sovereign in all matters, legal and constitutional, temporal and ecclesiastical. Some time ago it could legislate for about one fourth of the human race. It is thus one of the most interesting modern legislatures.

The British legislature consists of the Queen-in-Parliament, and not of Parliament alone as the student is apt to assume. In the strict sense the Queen is not a part of Parliament, though she is an integral part of the legislature in Great Britain.* No bill passed by Parliament can become law unless it receives the royal assent. That royal assent is a mere matter of form and cannot be withheld is irrelevant; though a formality, it is indispensable. In so far as the role of the Queen as a part of the legislature is limited to giving assent to the measures passed by the Parliament, nothing more need be said about it here. We shall be concerned in what follows with Parlia-

* Some writers hold that the term Parliament includes the Queen.

ment, its composition, powers and functions, and the process of law-making.

Parliament.— The British Parliament consists of two chambers, the House of Commons and the House of Lords. Something about the origin of Parliament and its organisation into two Houses has been stated in Chapter II; the topic need not be pursued further. Although the House of Lords is the older of the two chambers and was an august body not very long ago, we shall begin our study of the British Parliament with an account of the House of Commons which has become the principal and most powerful part of it. For several purposes the House of Commons is the British Parliament. Walpole put the matter beautifully and succinctly when he observed: 'When a minister consults Parliament, he consults the House of Commons; when the Queen dissolves Parliament, she dissolves the House of Commons. A new Parliament is simply a new House of Commons.' By making it possible for a bill passed by the House of Commons to be presented to the King for the Royal assent without the concurrence of the House of Lords the Parliament Act of 1911 lodged the sovereignty of Parliament in the House of Commons which alone represents the nation, and made the House of Lords a secondary chamber, though it is by no means a negligible factor. Furthermore, when the British Parliament is regarded as the 'mother of parliaments', the reference is always to the House of Commons; it is the progeny of the House of Commons and not that of the House of Lords which has spread into other countries. The fact that the story of the way in which the House of Commons first struggled for freedom and then for power is an epitome of British history lends to it a peculiar significance and importance. The vital position occupied by the House of Commons in British public and political life is thus described by Sidney Low:—

'The House of Commons is the most remarkable public meeting in the world. Its venerable antiquity, its inspiring history, its splendid traditions, its still youthful spirit and energy, the unrivalled influence it has exercised as the model of Parliaments, its inseparable connection with the vitality of the English nation, its place as the visible centre, the working motor of our constitution— all this gives it a unique position. More than the monarchy itself, far more than the Cabinet, it attracts the attention not of Englishmen alone, but of foreigners. Its debates are studied beyond the Channel and beyond the Ocean..... For a man to have attained a conspicuous station in this august assembly, to be numbered

among its leaders, its trusted councillors, its favourite orators, is to be counted among the foremost figures of his age.'

Though Parliament does not govern the country and does not even formulate policy— these as we have seen are the functions of the Cabinet— it nevertheless stands at the centre of the political stage. Some writers regard it as the political stage itself. Professor Neumann says that if the Cabinet is regarded as the head of the body politic, then Parliament is its heart.

In this chapter we shall study the composition, organisation, powers and functions, and the legislative procedure of the House of Commons, reserving the House of Lords for the next.

Composition of the House of Commons.— The character of the House of Commons has changed radically in consequence of the series of reform measures, which began with the Reform Act of 1832. Previous to its enactment the House represented the aristocratic section of the society and not the masses. What England had prior to 1832 was parliamentary aristocracy and not parliamentary democracy. In 1800 the number of Parliamentary voters did not exceed a quarter million. The Act of 1832 started the process of the democratisation of the House which was completed by the Representation of the People Act of 1928. This Act abolished all restrictions imposed on women franchise and established full adult franchise, giving the right to vote to women on a basis of complete equality with men. Prior to 1918 the system of plural voting prevailed in Great Britain. The practice was to allow a person a vote in a parliamentary election in any and every constituency in which he was qualified to be a voter. A citizen could vote, say, in the City of London if he had an office there, in the county of Kent, if he had a country-place there, and in another constituency if he owned some land there. This system gave the property owners a larger number of votes than those who had none. Since most of the property owners voted for the Conservative party, abolition of plural voting was demanded by the Liberal and Labour parties. The Representation of the People Act of 1918 greatly reduced the amount of plural voting but did not abolish it altogether. It permitted a voter not more than two votes, one in the constituency where he resided, and another in one other constituency where he might have had land or an office having a rental value of £ 10/- per annum. The House of Commons Redistribution Act of 1948 put an end to the small amount

of plural voting then existing in the country. It not only abolished every type of business-premise vote but also the second vote which nearly 228,800 persons enjoyed in virtue of being university graduates. It enabled the country to realise the democratic formula of 'One man, one vote' for the first time.

The size of the House has also undergone some changes during the last half-a-century or so. Prior to 1922 it consisted of 707 members. With the establishment of the Irish Free State in 1921 its strength was reduced to 615. In 1944 it was increased to 640. The Act of 1944 was passed with a view to redistribution of seats. As a result of the heavy dislocation of population brought about by the World War constituencies had grown so grossly unequal in population that any election on the old basis would have been very unfair. The Act of 1944 was amended in 1945, 1947 and 1948. The House of Commons Redistribution of Seats Act of 1944 and the subsequent amendments abolished all double-member constituencies and established the system of single-member territorial constituencies for the entire realm. The Representation of the People Act of 1948 put the membership of the House on a somewhat flexible basis. It prescribed that the membership of the House shall not be substantially greater or less than 613. It should have not less than 71 members for Scotland, 35 for Wales, and 12 for Northern Ireland. The House constituted in 1955, as well as the one constituted in 1959, contained 630 members of whom 511 represented England, 36 Wales, 71 Scotland and 12 sat for North Ireland. There is roughly one member for every 70,000 electors.

The House of Commons is a wholly elected chamber ; every one of its 630 members is elected on the basis of adult franchise from single-member territorial constituencies. As has been indicated above, with the abolition of University representation and the business-premise vote all sort of plural voting has disappeared from the country and the democratic principle of one man, one vote has been established. Now no citizen can cast a vote in more than one constituency. The abolition of University representation has also meant the disappearance of the small amount of functional representation that existed. The British system of representation is thus wholly geographical or territorial, and not functional or occupational. It may be mentioned in passing that the Conservative Government

considered in 1952 the question of restoring University representation which was abolished in 1948. The idea was however postponed.

A few words may be added about the manner in which franchise was gradually extended until it came to cover the entire adult population of the country. The process covered nearly a hundred years. It began with the Reform Act of 1832. This Act removed some of the glaring defects of the old system, over-hauled the suffrage requirements and extended suffrage to about half a million more people. It also redistributed seats. The Acts of 1884 and 1885 achieved for the counties reforms similar to what had been done for the boroughs by the Act of 1832. The next great landmark was Representation of the People Act of 1918 which swept away all the restrictions upon manhood suffrage and also gave the right of vote to about 85,00,000 women. In so far as it placed some restrictions* on women's right to vote it did not establish *universal* or *adult* suffrage. It was the chief object of the Representation of the People (Equal Franchise) Act of 1928 to remove all the distinctions and give the right of vote to all men and women of 21 years or more who have lived in the constituency since the 1st of June preceding the election. It thus took democratic England about a hundred years to establish universal adult franchise.†

At the present time under universal adult franchise about 60% of the total population of Great Britain have the right to vote. In 1831 not more than 4% enjoyed the right. As elsewhere, undischarged insolvents, idiots, aliens, paupers and criminals are not qualified to vote. In addition 'peers' are also disqualified. They are debarred from voting for the House of Commons because they are members of the House of Lords. Every British subject, whether he is a Britisher, Canadian, Australian, South African, or a New Zealander, has the right to vote provided he satisfies the residential qualification.

In order to be able to vote, a person must have his name entered

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* In order to be entitled to become a voter a woman was required to be an occupant of property or the wife of an occupant and not less than 30 years of age.

† Interesting though the provisions of the various Reform Acts named above are they have not been stated in any detail in the text because they are not absolutely necessary for our purpose. The student may consult Ogg or Munro.

in the electoral register of the constituency within whose territorial limits he resides. No ballot paper can be issued to any one whose name is not included in the register. The electoral register is prepared by a registration officer who is generally a clerk of the county or the borough council. An appeal from the decision of the registration officer lies to the County Court and from there to the Court of Appeal. Heavy penalties are provided by law for corrupt election practices on the part of any one participating in the election campaign. The ballot is secret.

Our account of the composition of the House would remain incomplete without a few words about the type of men who now find their way to its benches. Whereas upto the first quarter of the nineteenth century its membership was mainly monopolised by the landed aristocracy of the land, today, like most democratic assemblies in the civilized countries, it contains members drawn from almost all the sections of the community. Before 1832 members of titled families used to be in the majority ; even in the period between the two World Wars they accounted for 'at least two-fifths of the Conservatives, a quarter of the Liberals and an insignificant proportion of Labour members', the overall proportion being about 40% of the whole House. The eclipse of the Liberal party and the increase in the strength of the Labour party has reduced their percentage by more than half. 'In 1867 landowners were preponderant in both parties, whereas today, even among the Conservatives they are far outnumbered by businessmen and professional people. More than half the successful candidates in each election since 1942 have come from the liberal professions or managerial and administrative positions or have held commissions in the armed forces. Almost another third have been wage-earners or manual workers.'*

Though the number of manual workers and women successfully contesting election to the House has been small— only 97 manual workers and 14 women were returned on the Labour ticket and 1 manual worker and 6 women on the Conservative ticket, and one woman on the Liberal ticket were elected to the House in 1955— and the liberal professions, business and industry are over-represented, it can be held that the social structure of the British society is fairly accurately represented in the composition of the House of Commons.

* Mathiot: *op. cit.*, page 213.

The charge sometimes brought against it that inspite of universal adult franchise it is still aristocratic cannot be well-sustained. It can be regarded as a truly representative assembly.

Membership of the House, How Lost ?— Before proceeding to discuss some important questions about the British electoral system which have become the centre of keen controversy, it would not be out of place to refer to one curious fact about the membership of thr House of Commons. A duly elected member may lose his seat if he becomes bankrupt, goes insane, or becomes a peer by inheritance or otherwise ; he may even be expelled by the House for felony or treason. But he cannot *resign* his seat voluntarily. This is a survival from old times when membership of the House was a burden sought to be avoided by persons but imposed upon them by the community, and not a position carrying honour and influence with it. If a member wants to relinquish his seat, he has to adopt a roundabout procedure. Membership of the House is incompatible with holding an office under the Crown (other than a political post). Therefore what a member has to do in order to give up his seat is to obtain some office incompatible with its membership. The office generally used for this purpose is the Stewardship of the three Chiltern Hundreds of Stoke, Desborough and Burnham in Buckinghamshire or of the Manor of Northstead. A member applies for this office, gets it, ceases to be a member of the House, and then resigns the stewardship. The office is known to have changed hands twice in the course of a day. Why a member should be compelled to adopt this round-about method and not be allowed to resign directly is difficult to explain. This is an apt example of the inherently conservative character of the British temperament. It may be mentioned that there is no recall in Great Britain.

Some Electoral Problems.— Several important questions arise in connection with elections to the House of Commons. The first is that of mapping out the country into a number of electoral districts or constituencies. In the United States of America there is a law requiring that after each decennial census there must be a redistricting. There is no such law or custom in Great Britain ; there Parliament might rearrange the constituencies whenever it likes ; it has done so in the past at irregular intervals. The last general arrangement or redistricting took place in 1950 ; the two before it occurred

in 1918 and 1885. Political motives are not allowed to influence the work of redistribution of seats whenever it is taken up ; gerrymandering of the type sometimes current in the United States has no room in British political elections. The party in power does not make any deliberate effort to redraw the boundaries of electoral districts with a view to benefiting itself and injuring the interests of the opposition. The question of redistricting is taken up solely with a view to the removal of electoral anomalies and inequalities produced by shifts in population. Effort is made to make the various constituencies as much equal in size and voting strength as possible. It is the duty of the Permanent Boundary Commission established in 1944 to review the constituencies and recommend alteration in their boundaries if necessitated by movement of population from one area to another. Changes are made by an Order-in-Council and not by an Act of Parliament.

It may be pointed out here that there is no law or custom in Great Britain which requires a parliamentary candidate to be the resident of the constituency from where he seeks election. It is enough if his name is on the electoral roll of some constituency and he is not otherwise disqualified to stand. There are no positive qualifications for membership of the House of Commons except that a person must be a British subject of age, and should be willing to take the oath of allegiance. There are, however, certain negative qualifications. Peers, clergymen of the three great Churches, sheriffs of counties and mayors of boroughs, persons holding contracts from the Government or offices under the Crown of a non-political nature, convicts, lunatics and idiots cannot become members of the House of Commons. Women are eligible ; there are about 24 women M. P.'s at the present time.

A more important question than the one discussed above is the determination of the time for the holding of a general election. Since a general election can take place only after the dissolution of Parliament, the question virtually resolves itself into the following : When and how may Parliament be dissolved ? In answering this question it must be remembered that Great Britain has the parliamentary or cabinet type of government and not the presidential form as it prevails in the United States of America. In this type of government the legislature can be dissolved any time before the expiry of its full statutory period. It is interesting to note that during the last one

century and a half only one Parliament, that of 1867–73, reached its full term (it was a seven years' term then); in all other cases it was dissolved earlier.* The result is that in Great Britain parliamentary elections do not occur at regular intervals as they do in the United States, or even in France where a convention has developed that in the case of a defeat in the legislature the cabinet cannot appeal to the country. Sometimes three or four years might pass without a general election, and sometimes there may be an election in one year following a general election in the preceding year. Once there were elections in three successive years— in 1922, 1923, and 1924. In 1910 there were two elections. The British House of Commons has thus no fixed life; it may endure for one, two, three, four or five years as conditions permit. It should also be remembered that though the Parliament Act of 1911 has put the maximum life of Parliament at five years, thereby determining that the interval between two successive elections cannot exceed the five-year limit, under an emergency Parliament can extend its life beyond the statutory period. During the first World War the Parliament elected in 1910 was continued till 1918, and in the second World War the Parliament constituted in 1935 was continued till 1945. It was considered undesirable to hold a general parliamentary election during the pendency of the war. A Bill extending the life of Parliament beyond the statutory five years' period requires the concurrence of the House of Lords before it can be presented to the Monarch for royal assent.

The decision to dissolve Parliament and appeal to the country is always made by the Prime Minister. He may or may not consult his colleagues in the Cabinet. But the dissolution takes place only when the King issues a royal proclamation to that effect and indicates his desire 'to meet our people and to have their advice in Parliament'. In other words, the Prime Minister decides and the King decrees the dissolution. The royal proclamation also sets into motion the electoral machinery.†

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* A few more reached near the end of the term but did not complete it; *e. g.*, the one under the Coalition Government of 1931-35, and the Labour and Conservative Governments after the war.

† Prior to 1868 there was another way also in which a parliament could be terminated, viz., by the death of the monarch. The Reform Act of 1867 made the duration of a parliament independent of the death of the reigning monarch. It may also be stated that the present five-year term was fixed only in 1911. From 1716 to 1911 it was a seven-year and prior to 1716 only a three-year term.

We may at this stage take up for consideration the important question 'Under what circumstances may a Prime Minister ask the Monarch for a dissolution of the House of Commons?' The answer to this question is not simple and easy; the circumstances which may lead a Prime Minister to make such a request are many and of a varied character. The defeat of the Government in the House of Commons on an important and vital issue is one such occasion. But it should be borne in mind that every defeat in the House does not necessarily lead to the resignation of the Government; it remains in the saddle if the issue on which it is defeated is a minor one. The second thing to note is that under the prevailing conditions of party organisation and discipline defeat of a Government having an absolute majority in the House on any issue declared by it as vital is most unlikely. Since 1895 no Cabinet which had an original majority in the House has been overthrown in this way. Majority governments have, of course, asked for and obtained a dissolution of the House before and after 1895; the cause has however been internal dissensions; actual or dreaded defeat in the House became a pretext for the request. Sometimes, tottering cabinets have resorted to the stratagem of dissolution with a view to saving themselves from defeat. During the last seventy years or so governments having a stable majority at their back have sought dissolution before the expiry of the full term whenever the chances of electoral triumph appeared bright to them; they used this power to spring a surprise election on a sleeping opposition and thereby obtain an advantage over it.

Occasionally, cabinets have considered it proper to appeal to the electorate with a view to seeking its mandate for some particular policy. If some new issues have arisen since the last general election on which the government wish to consult the people, it can, and sometimes does, advise dissolution without waiting for the House to run its full course. The Liberal Government of Mr. Asquith dissolved the House in order to obtain electoral approval for their proposal to cut down the powers of the House of Lords in 1910. It would be recalled that the Leader of the Opposition advised King George V to dissolve the House and force the Government to obtain the approval of the nation for its Irish policy. Dissolution thus serves the purposes of a referendum in England. It is a great advantage of the British system that it allows general elections to be held whenever genuine issues have to be settled. It may also be mentioned that the

power of seeking dissolution is a potent weapon in the hands of a Prime Minister to enforce discipline on his followers whenever they threaten to go against his wishes. French Cabinets were weak against the Chamber of Deputies and the National Assembly in the Third and Fourth Republics because they did not possess this valuable disciplinary weapon.

Electoral Campaign.— Since the interval between the official announcement of dissolution and the date for the nomination of candidates is usually brief, being only eight days, the different political parties do not wait for the royal proclamation to select their candidates but keep their lists ready. The national or central organisation of each party prepares its list of candidates for the various constituencies on the basis of recommendations made by the local organisations. The process by which the Indian National Congress or any other other party selects its candidates is very much similar to the method in vogue in Great Britain. Preference is always given to candidates who are popular in their respective constituencies and are likely to win the election. The nomination procedure is simple. All that a candidate is required to do is to file the nomination paper signed by ten qualified voters of the constituency and deposit a security of £ 150/- which is forfeited if he fails secure at least one-eighth of the total number of votes cast. In our country the nomination paper has to be signed by two voters only, one of them is the proposer and the other the seconder ; no additional names of voters assenting to it are necessary.

The election takes place on the ninth day after the nomination (Sundays and other holidays excluded). The electoral campaigns in Great Britain are thus brief in duration ; 'the battle of ballots' lasts for about eighteen or nineteen days. In our country and in the United States this period is much longer. It should, however, be remembered that the short duration of the electoral campaign is not so real as it looks. In one sense it may be said to be going on most of the time. The parties keep themselves in readiness for the election ; it is but seldom that any one of them is caught napping. There are also by-elections to keep the spirit of contest alive. Members nurse their constituencies. All this should not be taken to detract from the truth of the statement that in England electoral campaigns are not so long drawn-out affairs as in the U. S. A. Less money is

spent on elections in Great Britain than in America ; there is also less of personal canvassing and of corruption and illegal practices. In regard to electoral affairs Great Britain has become an almost exemplary nation in the world. It should also be remembered that all the members are chosen in the same way, on the same day, and by the same suffrage. University representatives when they existed were elected on a different date and in a different way.

Election petitions filed by defeated candidates are heard by the courts. The Judges set aside an election only when there is evidence of corruption or illegality sufficient to influence the result ; merely technical faults do not influence the decision. Voiding of an election is not common.

Is the House really Representative of the Nation?— In several respects the House of Commons approximates to what a really democratic chamber should be. It is a wholly elected body and is constituted on the basis of universal adult suffrage. The electoral districts are small enough to allow the representatives to nurse their constituencies and develop intimate contact with the voters, and the elections are fair enough. Plural voting and University representation which came in for a good deal of criticism, as being inconsistent with the democratic ideal of one man, one vote, are now things of the past. Nevertheless, election to the House has some features to which objection is sometimes taken. Writers like Ramsay Muir contend that the present method of constituting the House makes it unrepresentative of the nation and, therefore, undemocratic. Something more than mere universal franchise is needed to make a legislature truly representative; it must be representative of 'all substantial bodies of public opinion, as nearly as possible in proportion to their numbers'.* The electoral system of Great Britain with its single-member constituencies and election by a bare majority makes the realisation of this ideal impossible. All the substantial bodies of public opinion do not necessarily get representation in the House of Commons in spite of adult franchise, and those which succeed in securing it may fail to obtain seats in proportion to their voting strength. The voting figures for the last several general elections prove the truth of this assertion.

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* Ramsay Muir : *How Britain is Governed*, page 156.

Year	*Conservative Party*		*Liberal Party*		*Labour Party*	
	Votes secured	*Seats won*	*Votes secured*	*Seats won*	*Votes secured*	*Seats won*
1922	38·7%	56·4%	28·6%	19·6%	29·6%	22·9%
1923	38·3%	42·2%	23·4%	9·4%	37·0%	47·0%
1924	47·8%	67·4%	17·9%	7·0%	33·1%	24·9%
1929	38%	41·1%	23%	9·9%	36%	46·8%
1931	(Coalition Party)					
	67·1%	90%	0·5%	0·7%	30·6%	8·4%
1931	56·1%	77·5%	10·9%	11·8%	33%	10·7%
1935	48·5%	63·8%	6·2%	8·9%	38%	27·3%
1945	35%	29·5%	9%	3·9%	48%	61·8%
1950	41·7%	47·7%	9·1%	1·4%	46·4%	50·4%
1951	48·05%	51·2%	9·53%	0·97%	48·7%	47·4%
1955	49·8%	54·8%	2·7%	0·95%	46·3%	44%
1959	49·4%	57·9%	5·9%	0·95%	43·8%	40·95%

The significance of these figures can be stated in another way also. In the election of 1922 the Conservatives got one seat for every 18,180 votes, the Liberal party one for 48,540 votes, and the Labour party one seat for 33,706 votes. In the election of 1929 one seat cost the Conservatives 34,000 votes, the Liberals 90,000 votes and the Labour party 29,000 votes. In the 1931 election the government coalition party secured one seat for 29,000 votes, the Labour party for 44,000 votes, and the Liberals for 25,000 votes. The figures for the general elections before and after World War II illustrate the same point. The Labour vote increased from about 8,325,000 in 1935 to just over 12,000,000 in July 1945, but it secured 393 seats after the War as against 163 before it. The Conservative vote fell slightly from 11,792,000 in 1935 to nearly 10,000,000 in 1945. The strength of the party in the House, however, registered a sharp decline from 358 to 197. In other words, while the Labour votes were about 120 per cent of the Conservative votes, Labour won almost twice as many seats as the Conservative party. Labour gained one seat for every 30,000 votes, the Conservatives gained a seat for 47,009 votes, and the Liberals got one for 187,000 votes. Under an equitable system of representation Labour would have got 299 seats in place of 393 which they actually won, Conservatives 248 in place of 197, and the Liberals 57 instead of 12. On an average the House has contained during the

twenty-three years from 1918 to 1941, 96 more Conservatives, 30 fewer Liberals, and 62 fewer Labour members than their respective voting strengths. In 1951 elections the Labour party secured slightly more votes than the Conservative party— 48·72% as against 48·05%, but won 24 less seats, 296 as against 320. These figures demonstrate beyond a shadow of doubt that single-member constituency system is most iniquitous in its working. It enables one party with a minority of votes in the country to obtain an absolute majority of seats in the legislature; it gives it over-representation. Other parties have failed to win seats in proportion to their voting strength; they are under-represented. It makes the result of an election so unpredictable that every election becomes a gamble. It also serves to obscure the mind of the nation instead of revealing it, and exercises an unwholesome influence on the minds of the voters. It is instructive to see how all this happens.

The chief feature of the single-member constituency system as it is in vogue in Great Britain is that the candidate who obtains the largest number of votes is declared elected, whether he has been able to secure an absolute majority of the total number of votes polled or not. So long as there are only two candidates in the field, the winning candidate is bound to get an absolute majority of votes; but when there are three or more contestants the situation may be otherwise, and the winner is likely to obtain less votes than the other candidates put together. Suppose there are four candidates contesting a seat, and that one of them gets 15,000 votes, the second 14,999, the third 14,500, and the fourth 5,501; the first candidate would be declared successful by a majority of one and would be considered to represent the entire constituency including the 35,000 voters who voted for the three defeated candidates. According to the British law the last candidate would forfeit his security. This system of majority election suffers from serious defects. In the first place, it means that the votes cast in favour of the losing candidate or candidates are wasted; they exercise no influence upon the composition of the legislature or upon the course of events. In practice it amounts to disenfranchising a large number of voters and thereby deprives universal franchise of its meaning and significance. The system prevents all sections of political opinion from being represented in the chamber, and makes the House of Commons unrepresentative in one sense. Its second grave defect is that it makes it possible for a party having a minority of

voters in the country to obtain a majority of seats in the House. On many an occasion the Conservative party got an absolute majority in the House with less than 40% of the total votes polled. On the contrary, some parties obtain fewer seats than what they would be entitled to on a proportional basis. This has been generally the case with the Liberal party since 1922. In other words, as has been pointed out above, according to this system the cost of votes per seat is not the same for all the parties ; *e. g.*, in the election of 1929 one seat cost the Liberals 90,000 votes, but the Labour party only 29,000 votes. This is obviously unfair and opposed to democratic ideals. The matter may be stated in another way also. In the 1929 elections the Conservative party would have secured 232 seats on the basis of the votes it polled instead of 256 it actually won ; and the Labour party 255 instead of 288, and the Liberal party 143 seats in place of 59. Similarly, in the election of 1931 the Government Coalition party obtained 493 seats in place of 368, Labour 46 in place of 168, Independent Liberals 4 in place of 3 and others 5 in place of 9 ; and in 1935 the Conservatives would have had a majority of only 41, and not of 235, if seats had been allotted on a proportional basis. The excess or deficit representation secured by the various parties in some elections would be clear from the following table :—

	Conservative	*Labour*	*Liberal*
1922	+ 92	− 36	−58
1923	+ 17	+ 11	−22
1924	+122	− 53	−69
1929	+ 22	+ 62	−83
1931	+120	−123	+ ·1
1935	+ 21	− 78	− 9
1945	− 35	+ 89	−33
1950	+ 36	+ 24	−45
1951	+ 20	− 9	−10
1955	+ 30	− 12	−11
1959	+ 54	− 18	−31

From the above table it is obvious that under the system, the Conservative party has always obtained over-representation except once, the Liberal party under-representation always except once, and the Labour party has been under-represented seven times out of eleven.

These are not the only defects of the system ; it has other serious flaws also. It encourages *negative* voting ; *i. e.*, voting not for what a man believes in but voting against what he dislikes. It can be illustrated as under. Suppose there are three candidates contesting from one constituency. One voter X wants to cast his vote in favour of candidate C but knows that circumstanced as the latter is there is no earthly chance of his being returned. He therefore decides not to waste his vote by giving it to him. He does not like candidate B and positively dislikes A ; therefore to prevent A from getting in he votes for B. This sort of negative voting distorts the Nation's verdict ; the result of a general election does not necessarily mean that the country has definitely voted for one set of principles and against another. It is quite feasible that the great landslide in favour of the Labour party in the election of 1945 might have betokened merely want of confidence in the Conservative programme and not necessarily love for Socialism. Its other defect is that it places power in the hands of "the least solid, the least instructed and the most wavering part of the electorate— into the hands of those who can be driven this way or that way by sudden panics, or electioneering stunts, or campaigns of creeping slander, or wild and reckless promises".* Where the contesting parties are more or less evenly balanced, it is the people on the borderland who generally do not take any serious interest in politics whose votes decide the issue. The different parties adopt all sorts of devices to catch such floating votes and the individual candidates are sometimes led to compromise with their principles. It is not necessary to labour the point further. Enough has been said to show the serious blemishes of the British system of election.†

Various devices have been suggested to remedy these defects. Some recommend the second ballot, some the cumulative vote system, and others the limited vote plan. None of these has found so much favour with writers on Political Science as the plan of Proportional Representation. A detailed discussion of it can be found elsewhere‡ ; only a brief account is subjoined below.

Proportional Representation.— It is a scheme of representation

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* Ramsay Muir : *Ibid*, page 161.

† Those who want to pursue the topic further and go into details are referred to Ramsay Muir : *How Britain is Governed*, Chapter V.

‡ See the author's *Elements of Political Science*, pages 404 ff.

designed to remove the more serious defects inherent in the system of majority election from single-member constituencies. Its great merit is that it ensures to every substantial body of political or public opinion in the country representation in the elected bodies in proportion to its actual voting strength. This point will be best and most easily understood by taking the case of India as an illustration. As the situation stood a few years ago it was extremely difficult, if not impossible, for an independent or a Hindu Sabha candidate, or a candidate put up by the Radical Democratic or Communist party successfully to contest an election against the Indian National Congress in a general constituency. Similarly, the non-Muslim League candidates found it no easy job to challenge the might of the Muslim League in Muslim constituencies. Non-Congress Hindu opinion was almost completely unrepresented in the Assemblies and Councils constituted in 1946, and the nationalist element among the Muslims had not been able to secure the amount of representation it deserved according to the backing it had in the country. This sort of over-representation of some and the under-representation of other groups is an impossibility under the P. R. scheme which would enable each party or interest to secure seats in proportion to the number of votes polled in its favour. In the second place, under it no vote is wasted : every vote is utilised in securing the return of some candidate or the other. The phenomenon of a very large number of voters, sometimes as large as 60 %, being practically disenfranchised is impossible. By virtue of these two features P. R. ensures that the legislature shall be a faithful mirror of public opinion, that it shall correctly reflect and not distort the national mind. It also takes away controlling power from the hands of a group of unstable and comparatively uninstructed persons. No better system of giving fair repsesentation to the minorities has been suggested.

There are many forms of proportional representation. One of the more commonly adopted is that known as the Single Transferable Vote system. Like other variants it requires multi-member constituencies. No maximum limit has been fixed ; the number of candidates to be returned may be anywhere between 3 and 15 or 20. It works well with four to ten or twelve seats. But whatever the number of seats to be filled, each voter has only one vote. He can, however, indicate on the ballot paper the order of his preference among the candidates by marking them as 1, 2, 3, 4, etc. If for

some reason his first choice does not require his vote, it may go to the second choice; if the second choice also does not stand in need of it, it may go to the third and so on. The point is that it shall be taken into consideration and not allowed to go waste. In order to be declared elected a candidate has to reach the *quota*. The *quota* is 'the smallest number of the votes that could be received by as many candidates as there were seats to be filled, yet by no larger number'. There are several ways of determining it. The commonest method is to divide the total number of votes polled by the number of seats to be filled plus one and add one to the quotient. The formula may be represented as follows:

$$\text{Quota} = \frac{\text{Total number of votes cast}}{\text{Total number of seats to be filled} + 1} + 1.$$

If the number of candidates to be returned from a constituency is nine and the total number of votes polled is 100,000, the quota would be 10,001. The quota being determined, the counting of votes begins. At the first counting only the first preference votes are taken into consideration, and candidates receiving the quota (or more) are declared elected. If at the first count all the seats are not filled— this is likely to be the case— votes not needed by the successful candidates are transferred to candidates indicated as their second choice by these voters, and with the help of such second preference votes some of the candidates, who failed to win the required quota of first preference votes, may succeed. If even with the help of second preference votes all the seats are not filled, the third preference votes are utilised. In this way all the vacancies are sought to be filled. If a candidate is so far behind that there is no chance of his being returned with the help of his first, second or third or even fourth preference votes, the first preference votes cast in his favour are not counted; the votes of such voters are given to their second choice. In this way an effort is made that each vote is used in securing the return of some one member to the legislature. The process of counting is highly complicated; this constitutes one of the chief difficulties of the scheme. It is also feared that the adoption of the scheme would lead to the multiplication of parties and encourage sectional interests. Under a multiple party system it would be extremely difficult for any single party to have an absolute majority in the legislature. Governments would be coalition governments with all the instability inherent in them. But this flaw is common to all forms of proportional repre-

sentation. Those who prefer to have a stable government backed by a stable majority in the legislature will refuse to have proportional representation in any form or shape. The question of the introduction of the scheme of proportional representation in Great Britain is thus vitally connected with the question of bi-party *versus* multi-party system.

The list system is another form of P. R. It was employed in Germany according to the Weimer Constitution. The whole country was divided into 35 constituencies (as against the 600 constituencies into which Great Britain with a much smaller population is divided). Every organised party put up a list of its candidates in order of merit and the voters voted, not for individual candidates, but for the parties. Every party obtained one seat for every 60,000 votes, and the seats were allotted to the candidates in the party list in order of priority. Surplus votes in the different constituencies were pooled together and were utilised for securing the election of candidates on the national party list who were not elected from the constituencies. The scheme worked well for some time but was given up at a later stage. This system has its own characteristic defects arising from the gigantic size of the constituencies and the absence of intimate contact between the voters and the elected candidates. It also puts too much power into the hands of political parties.

Though proportional representation was adopted in one form or another in several European countries, it never made any strong appeal to the British people, and we may add, to the Americans also. The reason is that the admitted injustice of the single-member constituency system with a simple majority vote was found to be a lesser evil than the serious defects of the P. R. The British system works best under a bi-party system; it is based on a continuous parley between the Crown as the originating and active element in government and Parliament whose function of criticism has devolved upon the official Opposition inside it. The subtle balance between the strongly entrenched Government and the Opposition whose earnest effort is to dislodge the majority party from its position and take its place is bound to be seriously disturbed by the emergence of the multi-party system which is the natural corollary of the P. R. Furthermore, the injustice of the British electoral system is considerably toned down by the fact that the party which secures an absolute

majority of seats in the House of Commons with a minority of votes in the country is prevented from abusing its power by the consciousness that at the next general election it may get less than its fair share if it were to lose the confidence of the electorate by its arbitrary acts. There is thus no great demand for proportional representation in Great Britain; the present system is likely to continue indefinitely, in spite of the injustice inherent in it.

Qualifications and Privileges of Members of the House.— Any British subject, other than a peer of Great Britain or U. K. (except Irish peers), a clergyman of the Church of England or of Scotland, or of the Roman Catholic Church, a person holding an office of profit under the Crown and an undischarged insolvent, is legally entitled to be member of the House of Commons. Ministers of the Crown do not come under the category of Crown servants who are ineligible for its membership. Women are eligible for membership, but their number in the House is rather small; it was 21 in the House constituted in 1955 and is less than 25 in the present.

Every member gets a salary of £ 1000/- a year, plus a daily allowance of £ 2/- for every day the House sits, and free railway travel. Members enjoy complete freedom of speech in the House, and freedom from arrest while Parliament is in session and for 40 days before and after each session, except for felony, treason or breach of peace. Freedom from arrest has little significance these days; it extends only to civil offences for which people are not arrested now. Freedom of speech inside the House signifies that no member can be proceeded against in any court of law for the statements made by him inside the House. The House may expel a member who is considered unqualified to sit. A Labour member was recently expelled when he inherited a peerage on the death of his father much against his will.

Organisation of the House.— In so far as Parliament is brought into existence by a general election and goes out of existence when it is dissolved at the expiry of its full five-year term or earlier, it is a *temporary* institution. Constitutional law requires that fresh elections should be held within three years after the dissolution of Parliament. But in as much as the royal proclamation which dissolves the old Parliament also summons the new one and orders the holding of fresh elections, it can be regarded as a permanent institution continu-

ing in existence from generation to generation. It remains suspended for brief intervals only. In the past its sessions were brief and were called whenever it suited the will of the Monarch. Today, not only are its sessions long, they have also become independent of the personal will of the Queen, even though they are convened by her. Its meetings are grouped into sessions in the course of which either House may adjourn as it thinks fit independently of the Crown or of the other House. Though there is no law determining the length of the interval between a general election and the meeting of the new Parliament, in practice it is made as short as possible. The new Parliament meets within about two weeks of the general elections and begins its work.

When Parliament assembles for the first time after an election, an official messenger of the House of Lords, called the Gentleman Usher of the Black Rod, invites the members of the House of Commons to present themselves at the bar of the upper house where they are informed by the Lord Chancellor about the wish of the Crown that they choose some proper person to be their Speaker. In other words, the first business of a newly constituted House is the election of the Speaker. Besides the Speaker, there are other officers of the House, namely, the Clerk and his assistants, the Sergeant-at-arms and his deputies, and the Chaplain. The Clerk and the Sergeant-at-arms together with their assistants are appointed by the Queen on the advice of the Prime Minister, and the Chaplain is appointed by the Speaker. All these officers are appointed for life and not for the duration of a parliament like the Speaker. Mention may also be made of two other important officers of the House, namely, the Chairman and the Deputy Chairman of the Committee of Ways and Means both of whom act as Deputy Speakers. They are appointed by the Government from amongst its supporters and are not re-elected on change of government. These are thus political offices ; *i. e.*, their occupants resign when the government goes out of office. In addition there are party officials, the Government and Opposition Whips.

The chief functions of the Clerk are the following : to sign all orders of the House, to endorse bills sent or returned to the House of Lords, to record the proceedings of the chamber, to keep in custody all records and documents, and to supervise the preparation

of the *Official Journal* (in collaboration with the Speaker). The main function of the Sergeant-at-arms is to preserve decorum in the chamber, direct the doorkeepers and messengers, enforce orders of the House, and execute warrants issued by the Speaker.

The Speaker.— The office of the Speaker is not only the most powerful and dignified of all the offices in the House of Commons, it is also one of the oldest and most respected offices in the State ; its holder ranks as the seventh subject of the realm in the official order of precedence. It seems to be almost as old as the House of Commons itself, though Sir Thomas Hungerford was the first to bear this title in 1377. Most probably the name is due to the fact that in the olden days the person appointed to this office alone had the right to speak to the King on behalf of the House. Originally his function was to take petitions and resolutions from the House and place them before the King and not to address the House itself. Though to-day he performs no such functions— the necessity for them has disappeared with the change in the status of the House from a petitioning to a law-making and deliberative body— the old name continues. It has been adopted by other countries also which have borrowed their institutions from Great Britain. The presiding officers of the American House of Representatives and our own Lok Sabha or the House of the People are designated as Speakers.

To-day the position of the Speaker is wholly independent of the Crown ; it was not however so in the past. Under the Tudor Kings the Speakers were nominated by the Crown and generally held some other office in the state. One of the Speakers was simultaneously the Solicitor General, and another a Secretary of State. The Speaker was thus a 'King's man' ; he was expected to help the King in keeping control over the House and use his influence in turning debates in the House in the direction liked by the King and seeing that no discussion arose on topics which were not to the liking of his patron. It was his duty to inform the House of the wishes of the King and to communicate to the latter the advice of his faithful Commons.

As the House of Commons grew in strength and power, the powers of the Crown over the Speaker declined and the principle became well established that the first and last loyalty of the Speaker was to the House. The role played by the King in his appointment diminished ; to-day it is limited to giving the royal assent to the choice

made by the House itself. The royal assent has become a formality. The last occasion on which it was refused was in 1679. The position today is that the Speaker of the House of Commons is neither the King's man, nor a government man or an opposition man ; he is just a House of Commons man. He belongs to all and to none. His non-partisan character has contributed not a little dignity to the office.

As has been indicated above, originally the Speaker was chosen by the Crown. In the course of its struggle for power, however, the House gained the right to elect him from amogst its members, subject to the royal approval. At the present time, both the things, election by the House and royal approbation, have become mere formalities. The royal approval is given as a matter of course; it has not been withheld since 1679. The way in which the Speaker is currently chosen would show that his election by the House is also more or less a formality.

Almost the first thing a newly constituted House is called upon to do is to elect its Speaker. The very sound and healthy tradition of re-electing the previous Speaker makes this task easy and formal. If the previous Speaker has been returned to the House, the practice is to re-elect him irrespective of any change in the relative positions of the two major parties. In 1945 when the Labour party came to power, it did not oppose the re-election of Col. Clifton Brown as the Speaker who had been put into office by the Conservative party in the preceding House. It is thus not uncommon to find an erstwhile Conservative member serving as Speaker in a house dominated by the Liberal or Labour party, and *vice-versa*. The result of this fine tradition is that the House had only twelve different Speakers between 1801 and 1934.

Even when the House has to make a new choice, election by it is a formal affair. The procedure is somewhat as follows. The leaders of the majority party confer among themselves and fix upon some person who has been a member of the House for a fairly long period and is well acquainted with its rules and procedure, and possesses tact, patience, and a judicial temperament. They also consult the Opposition and obtain the approval of its leaders for their choice. The name of the chosen person is communicated to the Clerk of the House. This official points to two different members of the House in turn to nominate their candidates. No member of the government is called

upon by the Clerk to perform this duty. Generally only one person is nominated and the election of the Speaker is uncontested. Occasionally, however, the Opposition may decide to set up its own candidate from its own ranks as happened in 1951 when the Labour party did not allow the Conservative candidate to be elected unopposed. The Conservative candidate won by 318 against 251 votes. The Labour leader, Mr. Attlee congratulated the new Speaker and promised him the full support of the Opposition in the discharge of his duties. The Speaker-elect makes a show of reluctance and of his unworthiness, and is escorted to the chair by two members. The next day he goes to the House of Lords accompanied by many members of the House and announces his election. The Lord Chancellor signifies the royal approval of the choice, and after getting an assurance from the Lord Chancellor that the ancient and undoubted rights and privileges of the Commons would be recognised, he returns to the chamber and reports to the House that his election has received the royal approval.

The healthy tradition of re electing the previous Speaker so long as he likes is intimately associated with two other traditions which have developed round the office. The tradition, 'Once a Speaker, always a Speaker', could develop only because of the other equally excellent and healthy tradition, that of the strictly non-partisan character of the office. From the moment a person occupies this exalted office, he ceases to be a party man, and severs his connection with the party to which he belonged. He does not attend any party meetings, participate in political discussions, or even offer advice on political affairs. With exaltation to the office, the Speaker must accept an exile from politics. This is why he is usually re-elected as long as he wishes to serve the nation as the Speaker. It makes no difference to his re-election whether the party to which he belonged previous to his choice has been returned to power or not. Not only this, Great Britain has developed another sound tradition. So long as he wishes to serve as the Speaker, his seat is not contested ; he is returned unopposed from his former constituency. There have however been one or two instances in the recent past when the Labour party broke this custom and set up its candidate against the outgoing Speaker. This action met with great popular disapproval ; the Speaker was returned with great majority without his having canvassed support for his candidature. How we wish that similar

traditions grew up in our country also.

Mention may also be made of another tradition connected with the Speaker of the House of Commons. On retirement he is made a Viscount and given a handsome pension. Speaker Whitley declined the offer of peerage in 1928. The Speaker is not appointed to some other post as sometimes happens in our country. This custom helps in maintaining his political neutrality which is of the utmost importance.

The Speaker performs a variety of functions. He represents the House of Commons in its relations with outside persons or bodies. He is the channel of communication between the House and the Monarch, and receives all messages and documents meant for the House. Royal messages to the House are read out by him. He refers to the proper authorities all the bills passed by the House, and sees to it that the amendments made by the House of Lords to the bills passed by the Commons do not in any way infringe upon the financial privileges of the latter. It is his duty to defend the privileges of the House and to execute its orders and decisions. His most important function however is to preside over the House when it is sitting and conduct its proceedings. He has complete control over its debates. It is he who determines who shall address the House after the member who is in possession of the floor has finished speaking. He does so by calling on one of the several members who rise with their heads uncovered on both sides of the House for permission to speak. In his choice he is guided by several considerations. After a cabinet minister has spoken, he would call upon a leader of the opposition to address the House. Sometimes members who wish to participate in a debate make their desire known to the Speaker through the whips. The Speaker sees to it that the opposition gets a fair opportunity to have its say before closure is applied. It has been alleged that the Speaker is more likely to recognise those members who are known for their debating skill and sense of humour than those who make dull speeches. He sees that the debate does not wander away from the question under discussion, and is free and courteous. He rules out all dilatory motions and is responsible for interpreting the rules and standing orders of the House, and enforcing them. He decides all points of order and gives rulings which are final. He puts questions to vote and announces the result. He can

refuse motions whose purpose is merely to cause delay, or which are improper in his judgment. He is the custodian of the dignity of the House and has to maintain order and decorum. He has considerable disciplinary powers to prevent disorder. The usual device employed by him to prevent disorder is to stand in his seat. The rule is that when the Speaker is on his feet, no member can stand and address the House. If a member does not sit down when the Speaker rises, and insists on speaking, the Speaker can suspend the offending member from the sitting for the rest of the day. If the offence seems graver, the Speaker can use a stronger weapon ; he can '*name*' the member. On this the House takes action and can expel the offending person for several days. Very few members of the House of Commons indulge in disorderly behaviour ; its proceedings are orderly and dignified. The task of the Speaker in maintaining order and decorum is comparatively easy.

The powers of interpreting the rules of the House and enforcing them, regulating debate, maintaining order and decorum, putting questions to vote, and announcing results, which have been described above are not in any way peculiar to the Speaker of the House of Commons ; they are enjoyed by the presiding officers of legislative bodies all the world over. There are however some functions of great importance which distinguish the British Speaker from his prototype in the United States, France, and a few other countries. One of them is the power conferred on him by the Parliament Act of 1911 ; namely, that of deciding whether a given bill is a money bill or not. As would be shown elsewhere, this is an important function ; it practically decides the fate of a bill. Secondly, he appoints the chairmen of standing committees from amongst the Chairmen's Panel, and decides how bills are to be allocated among them. He sometimes appoints members of commissions and conferences and presides over them. The Clerk of the House and other officers work under him ; all the 'house-keeping activities' pertaining to the administrative department of the House are under his control. It is useful to remember that the British Speaker does not cast his vote as a member of Parliament ; he has simply a casting vote in case the House is equally divided on an issue. His casting vote is given on certain established principles and is not determined by personal likes and dislikes. This again is the result of and strengthens the non-partisan nature of the office. The Speaker gets a salary of £ 5000/- a year

and an official residence in the Palace of Westminster. If the Speaker is absent, the Chairman of the Committee of Ways and Means acts as his Deputy and takes the chair.

It would not be out of place to draw a comparison between the British Speaker on the one side and the American and French Speakers on the other. The most vital point of difference between them is that the tradition of non-partisanship, which is a highly marked feature of the British practice and which has lent great dignity to the office, has not developed in either United States or France. The American and French Speakers retain their party affiliations and are expected to help their parties to put on the statute book bills in which the latter are interested and to obstruct the passage of measures to which they may be opposed. This is why their election is never unanimous and is always contested. It also explains the fact that the social prestige of the British Speaker is much higher than that of the American or French Speaker. The French Speaker was known to leave his chair and pour forth oratory by the hour before the Chamber of Deputies. But practice is hardening on British lines there. In our own country also we have not developed the principle of political neutrality of the Speaker after Independence: the presiding officers of our legislative bodies usually retain party connections. This is one of the reasons why they have not been able to win the confidence of the opposition parties which sometimes move motions of no-confidence in them.

How the Session Opens.— On the day following his election the Speaker, accompanied by the members of the House, presents himself at the bar of the House of Lords, announces his election, and receives the royal approval through the Lord Chancellor. He also demands and receives the ancient privileges of the Commons: namely, freedom of speech, freedom from arrest, the right to regulate its own procedure and others. On returning to their chamber, the Speaker and the members take the oath of allegiance. On the day following, the members are once again summoned to the Lords to hear the Queen's speech, read either by the Queen in person or by the Lord Chancellor in her absence. This Speech from the Throne, as it is called, is not really the Queen's speech but is prepared by the Prime Minister and outlines the main policy of the government in foreign and home affairs, and also says something about the great measures

to be introduced during the session. After the speech is over, the Commoners retire to their chamber where the speech is re-read and debated. In reply thereto, an address is voted in each House which amounts either to a vote of confidence or non-confidence in the government. The debate on the address may last for several days, and the opposition members may move amendments to it. After it is concluded, the House proceeds with the formation of the committees and enters upon regular business.

The Committee System.— Like other legislatures, the House of Commons has also developed a highly elaborate committee system to aid it in its legislative work. There is, however, a great difference between the committee system found in it and the system found in the American House of Representatives or in the French Chamber of Deputies and the National Assembly. The committees in the British House of Commons have not developed into permanent specialised organs responsible for controlling particular branches of government like the committees in the American House of Representatives ; nor have they tended to assume some of the functions of the House itself in regard to legislation and criticism of government. The reason for this fundamental difference is that the House of Commons still proceeds upon the principle 'that the House itself, sitting as a committee of the whole House, should undertake the preparatory work for its sessions'. This rule, strictly observed for two centuries, 'has not yet been seriously undermined. Other committees were originally set up solely in order to divide up the work of the committee of the whole House.'* The result is that the Committee of the Whole House plays a more important role than the other committees. According to Professor Mathiot 'there is no other country where committees play as small a part in the work of Parliament as they do in Great Britain.' The truth of this observation would be borne out by the account of the committee system in the House of Commons as given below.

Five different types of committees are found in the House of Commons. They are : (*i*) Committees of the Whole House. (*ii*) Select Committees on public bills. (*iii*) Sessional Committees on public bills. (*iv*) Standing Committees on public bills. (*v*) Committees on Private Bills. A few words about each type are added.

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* Mathiot: *The British Political System*, page 224.

(*i*) *Committees of the Whole House.*— What is called a Committee of the Whole House is not a small body set up by the House for some specific work like a Select, a Sessional or a Standing Committee; it is really the whole House itself meeting in a more informal way and carrying on its work of deliberation under a more flexible procedure. The sessions of the Committee of the Whole House are distinguished from those of the House itself by many things: (*i*) They are presided over not by the Speaker, but by the Chairman of the Committee of Ways and Means who is always an important leader of the majority party. (*ii*) The mace which is the symbol of the presence and authority of the Speaker is placed underneath the Table and not on it where it usually lies. (*iii*) The procedure in the Committee of the Whole House is much less formal and more flexible than in the House itself in as much as a motion need not be seconded, and a member may speak as many times as he likes. (*iv*) The discussion cannot be terminated by moving the 'previous question' as in a session of the House itself. The flexibility of procedure is essential if bills and financial measures are to be discussed in detail. Each Committee of the Whole House is called by a separate name; it is regarded as a separate committee created for a particular purpose. When the whole house sits to consider appropriations or demands for grants, it is known as the House in Supply or the Committee of Supply; when it sits to consider the government proposals for raising the necessary revenues, it is called the Committee of Ways and Means. When a Committee of the Whole House has finished discussing the measure referred to it, it rises; the House comes into session with the Speaker in the Chair and the mace on the Table, and the Chairman of the Committee reports the measure to it.

Until a little more than half a century ago, all bills of a public nature were referred to a Committee of the Whole House. In 1907, however, a provision was made for an increased use of the standing committees for the consideration of public bills. As a consequence the proportion of public bills sent to Committees of the Whole House has considerably fallen. At present, all money bills and public bills which are considered urgent are referred to it. Before the Labour Government took office in 1945, governments considered it advantageous to send bills in which they were keenly interested to Committees of the Whole House; they deemed it safer to adopt

this procedure than to send them to some smaller and more isolated committee. The Labour Government wanted to proceed more quickly with their legislative programme and adopted the practice of referring long and complicated measures to various Standing Committees. Even then, Committees of the Whole House play a greater role in Great Britain than elsewhere.

(*ii*) *Select Committees.*— The second type of committee of which the House of Commons makes use is the *select* committee. A select committee is created from time to time to consider and report upon some individual measure on which legislation is either contemplated or pending. Its purpose is generally to gather information required for intelligent legislation, examine witnesses, and so on. It consists of not more than 15 members. It selects its own chairman who keeps a detailed record of its proceedings and reports to the House. The number of select committees varies from time to time. After the task for which a committee is appointed is finished, it goes out of existence. Nearly a score of such committees are appointed in the course of a session.

(*iii*) *Sessional Committees.*— Certain select committees are created for the entire session and specific measures are assigned to them. They are known as *sessional* committees. They are about eight to ten such committees in the House, the more important of which are the Committee of Selection, the Committee on Standing Orders, the Committee of Public Accounts, the Committee on Petitions, and the Committee of Privilege. The Committee of Selection, a body of 11 members chosen at the beginning of every session, usually appoints the members of the various select committees, unless they are designated in the motion proposing the committee's creation. A select committee generally contains 10 members.

(*iv*) *Standing Committees.*— More important from the point of view of the main work of the House are the Standing Committees which relieve the Committee of the Whole House of some of its legislative work. Down to 1882 every public bill was considered by a Committee of the Whole House. This was the lengthiest stage of a bill and controversial bills sometimes took fifty or more days to pass through the committee. Under the pressure of Irish obstruction, the House reluctantly agreed to refer some of the public bills to the two standing committees appointed for the purpose. The standing

committees were thus designed to undertake certain functions on behalf of the House ; namely, the examination of a public bill and making amendments to it. In 1907 the number of Standing Committees was raised to four, in 1919 to six, and in 1947 to as many as may be necessary. At present there are five of them, known as A, B, C, D, and the Scottish Affairs Committee. All the five are appointed at the beginning of the first session of a new Parliament. According to Professor Zink they last till Parliament is prorogued ; while Professor Stout says that they continue till Parliament is dissolved.

A standing committee consists of 20 regular members and of such additional members as may be added for the consideration of any particular bill. The number of additional members cannot exceed 30. Most commonly the total strength of a standing committee ranges between 30 and 40. Having been created to do the work of a committee of the whole House, a standing committee conforms to that body in nature and procedure as closely as conditions permit. Its members are appointed by the Committee of Selection which tries to give to the various parties and currents of opinion representation roughly in proportion to their strength in the House of Commons. The chairman of each is appointed by the Speaker of the House from a panel consisting of not less than ten persons chosen by the Committee of Selection.

Unlike the Standing Committees of the House of Representatives (and also those of the French Chamber of Deputies and National Assembly) the Standing Committees of the House of Commons are not specialised. None of them is named after any particular department ; *e. g.*, Foreign Affairs, Home, Industry, or Agriculture. They are identified by the letters of the alphabet, A, B, C, and D. It is the duty of the Speaker to allot each bill to a particular committee ; he can also transfer a bill from one committee to another. The additional members are chosen with due regard to their knowledge and familiarity with the subject to be dealt with ; they cease to be members when the consideration of the bill is over. Though the core of twenty members remains unchanged, there is no permanency or constancy in regard to the total strength of a standing committee. The report of a standing committee is subsequently debated in the House. The Scottish Affairs Committee differs from the other standing committees

in so far as it consists of all the 71 members who represent the various Scottish constituencies and considers all the bills that relate to Scotland. This is a gesture to Scottish nationalist aspirations.

At this stage we may refer to the various points of difference between the British and American standing committee systems. The number of standing committees in the House of Commons is only five, while their number is more than a score in the House of Representatives. Many of the latter are of little significance. But though fewer in number the British committees are a little larger in size than the American. A British standing committee may have upto 50 members, while the largest of the American committees has 35 members. The British committees are nominated by the Committee of Selection, while the American counterparts are appointed by the House of Representatives, in form at least. The chairmen of the former are nominated by the Speaker, while those of the latter are selected on the basis of seniority. More vital than these points of difference is the fact that each of the American standing committees is a relatively stable body whose members have specialised in a particular aspect of public policy and is concerned with bills pertaining to a specific department ; a British standing committee has no such stability, its additional members are constantly changing, and it does not deal with one type of bills. The consequence is that the American committees exercise far more control over administration than their British parallels. Another point of difference, which will be explained at a latter stage, may be noted here. In Great Britain a bill is referred to a standing committee after it has passed the second reading in the House and its general principle discussed and accepted. The standing committee cannot kill the bill or drastically change it. In the United States a bill is referred to a standing committee before it has been discussed and debated by the House; the committee is free to overhaul and change it completely, and even to kill it by the simple device of non-reporting it to the House.

(*v*) *Committees on Private Bills.*— The existence of committees on private bills constitutes a peculiar feature of the House of Commons; nothing like them is found in the House of Representatives. This is because in the latter there is no distinction between public and private bills as it exists in the former. In Great Britain a bill is called *public* if it concerns the citizens in general without

reference to any particular locality; *e. g.* a bill pertaining to education, military service, revenues, taxation, or old age pension. A bills is known as *private* if its object is to alter the law relating to some particular locality or to confer some rights on some particular persons or group of persons, or to relieve them of some liability; *e. g.*, a bill permitting a county council to extend a railroad or construct a tramway. A private bill is referred to a Private Bills Committee which generally consists of four persons named by the Committee of Selection. Unlike a standing committee, a committee on private bills conducts its work in a quasi-judicial way and holds hearings and examines witnesses who may be interested in the bill under examination. The procedure which a private bill has to go through will be described elsewhere.

(*vi*) Finally, mention may be made of *Joint Select Committees* consisting of members drawn from the House of Commons and the House of Lords and presided over by a peer. Such committees can be set up only by previous agreement of both the Houses; their object may be to discuss some question of mutual interest or to undertake an enquiry such as was made in regard to Indian constitutional reforms. Their terms of reference are generally specifically mentioned, and their competence limited by the decisions of the two Houses.

The Utility of Committees.— The system of standing committees has on the whole proved its value. It is probable that a more extensive use of them may be made as the volume of business before the House increases. The increasingly technical character of much modern legislation may also lead to a greater resort to their use and to the addition to them of members who have the requisite amount of knowledge and experience of the subject. The committees perform the very important task of considering every bill referred to them in detail, making amendments wherever necessary and presenting it in a form ready for general discussion in the House. They thus save a good deal of time of the House and may be said to serve as its eyes and ears, and often the brains. But it may be pointed out that the British committees do not act as 'the eyes, the ears, the hands, and often the brains' of the House as the American committees do. As was pointed out in the opening paragraph of this section, the House of Commons wants to retain power in its own hands and not give it over

to its committees. There have been some proposals to change the system which can be omitted here.

Sessions, Sittings, Rules of Procedure, etc.— The House of Commons meets once a year. The annual session begins in November, adjourns for the Chrismas holidays, reassembles again towards the close of January or in the first week of February, and continues with brief adjournments for Easter and Whitsundtide till late July or early August when the summer recess begins. It meets again late in October or early November for a few days when the Queen prorogues it. The next session is convened shortly afterwards. A new session is always convened by the Crown and is also prorogued by the Crown. But it adjourns by itself without any action on the part of the Crown. Adjournment simply means temporary suspension of business; it does not mean the termination of the business before the House. Prorogation means the closing of the session and the end of all pending business. A bill which has not been finally passed by the House before prorogation lapses and has to be started again in the next session. Both the houses of Parliament are summoned to meet simultaneously and are prorogued together; they need not however adjourn together; the sittings of one are independent of those of the other.

When the House is in session, it meets every day from Monday to Thursday from 2–45 p. m. to 11 p. m. On Fridays it meets at 11 a. m., and on Saturdays not at all, except by special arrangement. The day's work begins with a psalm and short prayer followed by the consideration of such private bills as may be listed for the day and the presenting of petititons. This does not take much time. Then comes the question hour when private members interrogate the ministers concerning administrative and other matters pertaining to their respective departments. The question hour is often the most interesting part of the day's proceedings and is of the utmost constitutional importance. It is during this time that the House acts as a ventilating chamber and throws the light of publicity on governmental activities and policies. The knowledge that he is apt to be called to account and made to answer questions on the floor of the House acts as a check on a minister and prevents him from developing bureaucratic tendencies, and compels him to keep an eye on the public and the press. This institution is thus a valuable safeguard of individual

liberty ; it keeps the expert responsive to the layman. It is also useful in other ways. It shows how far each minister understands his department ; it enables members of the House to obtain information which would be difficult to get otherwise. It also gives the Government an opportunity to clear doubtful points about its policy, correct a piece of false information and to put down rumours. As a device for holding ministers accountable for their activities and policies the question hour has been very useful. It has saved the government from being indifferent to the impact of administration upon the private citizen and his interests and keeping them responsive to their needs and problems. There is nothing like this institution in the American House of Representatives, because the ministers or secretaries of state are constitutionally debarred from being present in the House.

Usually two days' notice is required for answering a question. If a matter is urgent, the Speeker may allow questions on a few hours' notice. He can disallow a question if it is of unreasonable length or contains statements of an argumentative or ironical nature, or refers to any debate that has been held in the current session or asks for a mere expression of opinion, etc. To avoid the danger lest members should abuse this ancient and valuable privilege, the Speaker is made the sole judge of the admissibility of a question. It is open to a minister to refuse to reply to a question on the ground of public interest ; and sometimes ministers do resort to this practice. But on the whole it is in their interest to give answers ; refusal to do so would create a bad impression on the public.

It may be added that a question of a definite type called an Interpellation prepared the way for a debate in the French Chamber of Deputies and the National Assembly in the Third and Fourth French Republics. The debate could be concluded only with a vote of confidence or no-confidence in the government. Many a French ministry made its exit as the result of an unfavourable vote at the end of the debate. In Great Britain questions can never lead to a debate. All that can happen is that the member may move a motion of adjournment if the answer to his question is unsatisfactory. If the Speaker accepts the motion of adjournment, the business of the House is suspended at 7–30 p. m. to allow the motion being discussed.

The question time ends at 3–45 p. m., when new members, if any, are introduced. The House then is ready for its work of legislation,

debate, etc. At intervals, some days are set apart by the Government at the request of the Opposition for debates on the policy of the Government on important issues. On Fridays the House begins at 11 a. m. and adjourns at 4 p. m. This is done to allow the members time to leave for their homes or constituencies for the week end.

The business of the House is conducted in accordance with the established rules of procedure. They are the product of a slow process of growth. Although many of them have been adopted in a written form in the shape of Standing Orders, and remain in effect until modified, altered, or repealed by the House, custom still plays an important part in regulating the procedure. It is no easy thing for a member to acquaint himself with all the rules and customs; there is a modicum of truth in the statement attributed to Parnel that a member could learn the rules best by breaking them. Even Prime Ministers like Gladstone were sometimes found transgressing them. The House is its own master in determining the rules of procedure and can suspend any rule or repeal it at any time by a simple majority.

In theory the House itself settles the order of its business; it is however the Prime Minister who actually determines it. Every Thursday he places before the House the programme for the next week. Though Fridays are generally set apart for private members' bills, the Government annexes even these days, if and when the load of work before the House becomes heavy. Government business takes precedence over private business. One of the most noteworthy developments of recent times has been the gradual elbowing out of the private member from the work of legislation. The opportunities given to private members to push their own bills are very meagre. It may be mentioned that all members of the House except members of the Ministry are private members, whether they sit on the Government or on the Opposition benches.

Parliament means a place of talking or discussion. The debates that take place on its floor at the various stages in the passage of legislative measures and on questions of government policy are followed by millions of persons in different parts of the world. A few words about their character would not be out of place here. Speeches in the House of Commons are addressed to the Speaker, and those in the House of Lords to the members. In both the

chambers members are not allowed to read manuscript speeches, though the use of notes is permissible. Speeches in the House of Commons are generally short; it is unusual for a member to speak for more than an hour, but no time limit is fixed. No member is allowed to speak twice on the same question, unless it be to offer some sort of explanation of a part of his speech which has been misunderstood. Offensive expressions are forbidden, and members are expected to observe the rules of civilized debate. No member refers to another by name but always as the Hon. Member for this constituency or that. Members transgressing the rules are called to order by the Speaker, and if anybody defies him and persists in misbehaving he may be named and suspended.

The debate on a question cannot be continued indefinitely; it has to be brought to an end some time. Several ways of terminating discussion have been recognized in the House of Commons. One of them is simple closure. At any time in the course of discussion a member may stand up and move that the question be now put. If 100 members support the motion and it appears to the Speaker that there has been no infringement upon the right of the minority or abuse of the rules of the House, the question shall be put forthwith and decided without further debate or amendment. The second form is more drastic and is known as *guillotine*. It means that at a stipulated hour on a fixed day a bill as a whole shall be put to vote irrespective of whether any part of it has been discussed or not. In other words, a definite time limit is fixed within which discussion on a measure must be over. This in turn requires what has been termed 'closure by compartment'. It means that discussion on a given part or clause of a bill must terminate within a specific time limit. The third form of closure is nicknamed, '*kangaroo*'. It signifies that out of all the amendments to a bill or motion, the presiding officer shall pick out some as more important for discussion and drop out the rest. This saves a good deal of time. Of course it is not necessary that the Speaker must grant the closure whenever it is demanded; he may and sometimes does refuse it.

At the present time the proceedings of the House are reported verbatim and published officially. But for long there were no official arrangements for their publication.

Functions of the House.— Since for all practical purposes the

House of Commons is the British Parliament and performs all its functions, we may conveniently study, at this stage, its functions. They are differently stated by different writers, some laying stress on some and others on other functions. In the third Report of the Select Committee on Procedure published in 1946, the Clerk of the House defined them as follows: (*i*) Representation of popular opinion; (*ii*) control over finance; (*iii*) the formulation and control of policy; and (*iv*) legislation. Even though this classification comes from a highly authoritative source and may be accepted as technically correct, it really misses the point. Though the House derives its authority and power from its being representative of the people, and though it does voice public opinion and inject it in public administration, it is doubtful if 'representation of public opinion' can be treated as an activity separate from and independent of the rest. Moreover, as we have already seen, there are grounds for maintaining that, instead of being a mirror of public opinion, the House as it is constituted at present, can be regarded as misrepresenting and distorting it. The other three certainly form part of its activities, though they are not efficiently discharged. The main shortcoming of the above-stated classification is that it does not take note of some of the most important and vital functions of the House; *e. g.*, criticism of government, ventilation of grievances, keeping a government in power by providing it with a majority. In what follows we shall describe in brief its main activites. Although the Clerk of the House listed legislation last, we propose to give it the first place in our order of treatment, because the House is a sovereign body and the chief mark of a sovereign authority is to make laws binding on all citizens and associations in the state. The Queen-in-Parliament is the sole law-making agency in the United Kingdom.

(*i*) *The Legislative Function of the House.*— Even though the initiative in legislation has almost completely passed into the hands of the Cabinet and it is rarely that a private member is able to secure the passage of any bill introduced by him, legislation remains one of the main functions of Parliament. The House spends most of its time in considering, debating, and passing measures sponsored by the Government. The dominance of the Government in the work of legislation has, in a sense restored, 'the relationship which formerly existed between the executive and the legislature. The old formula that laws are enacted by the King-in-Parliament has been given its

former meaning with Crown now substituted for the King.'*

In describing the legislative work of the House distinction must be drawn between public and private bills. To repeat what has been described on page 143 above, a public bill is one whose provisions have a general application because they relate to the country as a whole and affect all the citizens alike; *e. g.*, a bill levying a tax or regulating the relations between the employer and the employees in an industry. On the other hand, if a bill relates to some special interest and applies to a section of the society living in a specified area, it is called private; *e. g.*, a bill permitting a county council to undertake some enterprise not authorised by existing law. The distinction is important because the procedure prescribed for one type is different from that laid down for the other. Within the category of public bills a further distinction may be made between government bills and private members' bills. A very large proportion of public bills coming before Parliament are introduced on behalf of the Government; they are sponsored by a Minister of the Crown. A very small number are initiated by private members; *i. e.*, by members of Parliament who hold no ministerial office under the Crown. Though there is no difference of procedure between them, the chances of a bill introduced by a private member finding its way to the statute book are very dim; no such bill can secure the majority necessary for its adoption unless it is lucky enough to receive government backing. Moreover, most of the time of the House is taken up by the Government; even Fridays which are generally reserved for discussing private members' bills are sometimes annexed by the Government because of pressure of work. The result is that the initiative in legislation has passed on to the Government almost wholly. It is the Government which draws up the legislative programme, sponsors most of the measures and sees that they are placed on the statute book. The role of the private member in legislation has been reduced to discussing and passing government measures. Undoubtedly, they still retain the right to sponsor measures and seek the support of the majority to get them passed, but the chances of success are few.

Before describing the parliamentary procedure for public bills, a few words may be added about the way in which the legislative programme of the Government is prepared. As has been stated above,

* Stout: *British Government*, page 129.

a very large majority of the public bills emanate form the Government. The Government has not only to secure the passage of the Finance Bill, the Appropriation Bill, the Army, Air Force and Navy Bills, the Consolidated Fund Bills and the Expiring Laws Continuance Bills, it has also to introduce new bills to give effect to the policy announced in its election manifesto as well as to satisfy major party interests. Sometimes bills have to be introduced to implement the recommendations made by royal commissions and also to satisfy pressure groups inside and outside Parliament. In the next place, many bills have their source in the experience of the permanent civil service whose members staff the various administrative departments. They know more than any body else the difficulties cropping up in the implementation of the existing laws and are therefore in the best position to suggest remedies and improvements. 'Election commitments of the dominant party, the administrative activities of a department, or the recommendations of a royal commission' are thus among the important sources from which legislative proposals come. All the proposals are considered by a committee of Cabinet which draws up a provisional list of bills to be passed. This list is discussed by the Cabinet and adopted with whatever changes may be deemed necessary. The legislative programme thus determined is announced in the speech from the throne at the beginning of each session.

The next step is for the minister concerned with a given bill to get it drafted in a proper form. This is done by expert draftsmen employed in the office of the Parliamentary Council to the Treasury under the direction of the minister. The draft is examined by the Legislation Committee of the Cabinet which must give its approval to the measure before it is submitted to Parliament. This Committee also decides in which House it is to be first introduced. Private members may draft their bills themselves or engage some expert for the purpose.

The constitutional requirement is that a public bill may originate in either House, provided it is not a money bill which can be first introduced only in the House of Commons. It is for the Speaker of the House of Commons to determine whether a given bill is a money bill or not. In actual practice all important measures originate in the House of Commons; it is only bills of a non-controversial nature which start their career in the House of Lords.

The procedure of introducing a bill is largely similar in both the Houses of Parliament. We shall assume that it is being originated in the House of Commons, as most measures are. All that a minister or a private member has to do is to announce his intention to introduce a bill to the Speaker, and then either place the Bill on the Table or move for leave to introduce it. On the day appointed for the purpose the Clerk of the House reads out the title of the bill. This constitutes the *first reading* of the bill. The Speaker announces the date for its second reading; the order for printing the text of the bill is also given.

The date for the second reading, though announced by the Speaker, is in practice determined by the leaders who are in charge of the government's legislative programme. On the announced date the minister in charge of the bill moves that it be read a second time. The second reading is undoubtedly a very important stage— one may even call it the most important stage— because during it the basic principles of the bill and its general lines are discussed. Those opposed to it criticise and attack it in long speeches and try to show that it is not needed or is obnoxious; whilst its advocates and supporters defend it. The debate may last for a day or two, and is not allowed to drag on indefinitely. The opposition can either move its outright rejection or that it be read six months hence which means indefinite postponement. At the conclusion of the debate a vote is taken. An adverse vote usually means the resignation of the government; it is however very rare. Because the Government commands a majority in the House, the vote is generally favourable and the bill enters the committee stage. It may go to a Committee of the Whole House, if it is a money bill or is otherwise important; or it may be referred to one of the Standing Committees. Occasionally, a bill is sent to a select committee. This is an additional stage; for after having been reported back by the Select Committee it goes to either a Committee of the Whole House or to a Standing Committee. The committee stage is the time for the discussion of the bill in detail and clause by clause consideration which may extend over several days and even weeks. Numerous amendments, whose number may sometimes reach a hundred, may be moved by opposition members with a view to softening the rigour of some of its provisions which they may not like or removing their obscurities. Many of them are usually accepted. Discussion on the bill has sometimes to be curtailed by the employment

of closure in its various forms. A private member gets more opportunities for using his talents and contributing to the work of legislation as a committee member than in the House where the debate is arranged by whips and the result is a foregone conclusion.

The committee having finished its work, the bill, as amended by it, is reported back to the House, and enters upon what is known as the *report* stage. There is a general debate on the bill as reported by the committee ; amendments are permissible at this stage which were not allowed during the second reading. This ensures that in its final form the bill represents the will of the House and not merely that of the committee. It should be noted that every committee has to report every bill referred to it back to the House ; no committee can kill a bill by merely failing to report it back.

After the completion of the report stage the bill enters the last stage which is known as the *third* reading. It is usually held on the same day and is a more or less formal affair. No fresh amendments except of a verbal or minor character can be moved at this stage. The general bebate does not take much time ; it merely gives the Government and the Opposition a fresh opportunity to state their positions over again. Though the fate of the bill has been pretty well determined by this time, occasionally the Government has to face rough time as the Labour Government had to do in the case of the bill providing for the nationalisation of iron and steel. At the conclusion of the debate the Speaker puts the motion that the bill be read a third time. The vote is taken and the result is announced. This completes the career of the bill in the House of Commons.

It is then sent to the House of Lords. What happens to it there we shall describe in another context. Here only this much may be stated that no bill can be presented to the Monarch for the royal assent unless it has been agreed to by both the Houses in the same form except as provided for in the Parliament Acts of 1911 and 1949. Differences between them are settled by mutual give and take ; and if no compromise is possible in any given case, resort is had to the provisions of the Parliament Act of 1911 as amended by the Act of 1949.

Royal Assent.— Royal assent, though a formality at the present time, is indispensable. Without it no bill passed by Parliament can become an Act and be placed on the statute book. It is given in the case of public non-financial bills in the following French words :

Le Roy le veult (the King wishes it). The British people have the habit of preserving ancient customs, particularly if they have a touch of drama. In the case of money bills the formula is slightly longer; its English version is: 'The King thanks his good subjects, accepts their benevolence and so wishes it'. In the case of private bills it is *Soit fait comme il est desire* (let it be done as desired). Though royal dissent has become obsolete and it is not likely to be revived, it is not impossible to imagine circumstances in which the Monarch may find it necessary to revive the ancient right of veto; *e. g.*, when a fanatical and reckless government forces a bill through a docile Parliament which imperils the State. It is however a purely hypothetical case, not at all likely to materialise.

Private Bills.— A few words may be added about the procedure in regard to private bills. The House of Commons Manual defines a private bill as a bill whose object is 'to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or body of persons.' Its object may be to confer some privilege upon some individual or group of individuals; it is however local bodies like borough and county councils which make requests for special legislation in the form of private bills. In as much as the aim and object of a private bill is different from that of a public bill, there is bound to be some difference in the procedure adopted in regard to each. The difference relates to the manner in which the former is introduced.

A private bill can be introduced in either House of Parliament; it must however be accompanied with a petition and every petition must be preceded by published notices to the persons whose interests are affected by it. Copies of such notices must be sent in advance to the government department concerned. No petition accompanying a private bill can be entertained unless these preliminaries are fulfilled. Each House has two parliamentary officials known as the Examiners of Petitions for Private Bills whose duty it is to satisfy themselves that all the requirements have been complied with and to certify to that effect. Only when such a certificate has been obtained, can a bill be introduced in either House. There is no provision like this in the case of a public bill introduced by a private or a government member.

After having been introduced, every private bill has to go

through the first and second reading like a public bill. If there is no opposition during the second reading, it is referred to a committee on unopposed bills. If there is opposition to it, the bill is sent to one of the committees on private bills whose number is four in the lower and five in the upper House. This corresponds to the committee stage through which a public bill has to pass. But the way in which a committee on private bills considers the bills submitted to it differs in some essential respects from the manner in which a standin committee examines a public bill. The proceedings of the former are quasi-judicial in character. The first task of the committee is to examine the preamble to the bill setting forth its object and to hear arguments advanced by its advocates and opponents alike. The arguments are conducted by paid counsels on behalf of each party. Witnesses are heard as in a court of law, and the hearings are fair and impartial. If the committee are convinced that the preamble has been proved, they proceed further; otherwise the bill is dropped. Bills reported favourably by the committee are almost certain to be passed by the House without discussion; and are thereafter sent on to the other House. It may be stated that the committee examining a private bill is generally in touch with the government department or departments concerned and makes itself certain that the bill before it does not conflict with the general policy of the government or create an undesirable precedent.

This procedure of dealing with private bills has certain advantages and disadvantages. It ensures a careful, fair and non-partisan consideration of measures coming up before the House. Party politics has no place in it. The entire scheme is based on the principle that such measures ought to be decided by persons who have listened to both sides and are not prejudiced in favour of or against either side. Government seldom or never takes part in the proceedings.

Its second merit is that it saves the time of the national parliament. Both the houses practically accept the findings of the committees without wasting time and without debates, etc. This stands in sharp contrast to the practice as it prevails in the United States of America where there is neither a non-partisan and careful examination of the measures nor any relief to Congress. Its great defect lies in its expensiveness. The counsels who argue have to be

paid high fees and the cost of bringing in witnesses has to be borne. The advantages far outweigh the defects. Those who seek certain privileges should be prepared to spend to procure them. On the whole the scheme is sound and has been working well.

Provisional Orders Confirmation Bill.— The purpose for which a corporation or a company seeks to promote a private bill can, in some cases, be more easily realised by obtaining from the government department concerned an *order* allowing it to proceed with the work. Parliament has passed many Acts pertaining to public health, railways, street railways, public lighting, poor relief, education, etc., authorising government departments, such as the Ministry of Health, the Home Office and the Board of Education to grant to individuals or groups of individuals certain powers, where adequate cause for such a grant can be shown. For example, if a local body wants permission to issue municipal bonds in order to finance a hospital, it approaches the Ministry of Health for it. The Ministry inquires into the merits of the application through its administrative officers, and if satisfied about its genuineness, issues an *order* permitting the applicant to proceed with the work. The *order* thus takes the place of the private bill; it deals with matters which used to be dealt with by private bills before. The result is that the quest for private bills has grown less, and the issue of *orders* has increased. The order is however *provisional*; it cannot be acted upon until it has received Parliament's approval. Hence it is termed *provisional*. Several provisional orders are collected in the form of a bill, and the bill is introduced in Parliament on behalf of the Government. The Act which confirms these orders is called Provisional Orders Confirmation Act. Its passage through Parliament is not usually opposed. If there is opposition in any case, the bill is referred to a select committee. The chances of its being defeated are however negligible. It should be noted that Parliament does not pay the same attention to such bills as they deserve. Here is an instance of Parliament assuming a task which it does not properly perform.

The Role of the Cabinet in Law-Making.— Although we have tried to bring to the notice of the reader the vital role played by the Cabinet in deciding what measures are to be introduced in Parliament and in what order, and in drafting them, a few words may be added here concerning it. It is not only in the preparation of the

legislative programme which is to be placed before Parliament that the role of the Cabinet is prominent; it is visible at all stages. It is the business of the Minister to whose department the bill belongs to pilot it through all the stages successfully. He bears the brunt of the debate, defending and explaining the provisions of the bill, meeting the attacks of the opponents, and accepting or rejecting the various amendments moved by members. No amendment can be accepted to which he may be opposed. We may therefore say that whatever may be the theory, in actual practice it is the Cabinet that legislates; the role of Parliament is confined to giving assent to whatever the Cabinet proposes, (subject, of course, to its power to modify the cabinet proposal). 'When we say that the House of Commons makes the law, we use language that no more conveys the fact than the legal formula, which tells us that every statute is enacted by the King with the advice and assent of Parliament. New laws are made by the Ministry, with the acquiescence of the majority and the vehement dissent of the minority, in the House of Commons.'* This passage clearly brings out the dominant role played by the British Cabinet in legislation. It has assumed the leadership and taken the initiative in legislation. It determines not only what measures shall be introduced but also the time that is to be devoted to each. Whenever it has a majority, it is in a position to ensure that nearly all legislation for which it assumes responsibility shall pass into law in almost the same form in which it introduces it. Nothing like this can happen in the United States or in France.

This dominance of the Cabinet has thrown the private member into the background. His influence over legislation is little greater than that of a private individual outside. His power to initiate legislation is confined to the right of moving his private member's bills whose chances of successfully finishing its passage through Parliament are meagre. The standing orders of the House, its traditions and the theory of ministerial responsibility all conspire to make his voice largely ineffective so far as modification of the measure before Parliament is concerned.† We thus have the curious fact that in

* Sidney Low, *op. cit.*, pages 59—60.

† It is not to be assumed that a measure sponsored by the government can never be defeated or substantially modified in the House of Commons. Outright rejection of a government bill is, of course, rare; for it would mean the resignation of the Cabinet, particularly if the bill happens to be important, but some bills do undergo substantial modification in both the chambers.

Great Britain quite a large number of the members of the legislature are not legislators or are legislators only on sufferance. This is a very serious defect of the British system.

(ii) Control over Finance.— The second important function of the House of Commons is to exercise control over national finance and act as its guardian. It should be remembered that it was precisely the power of granting and withholding supplies to needy monarchs which enabled the House of Commons to wrest power from them and strengthen its own position. Even to-day one of the bases of parliamentary supremacy is its power over the purse. Whoever coined the phrase 'Who holds the purse holds power' uttered a very great truth. It is one of the fundamental principles of the British constitution that the Crown has no power to tax save with the sanction of Parliament and no power to spend a farthing except with the sanction of the same authority. Parliament is the sole and ultimate authority to determine what taxes shall be levied and how the revenues received shall be spent. It must be remembered that in this context Parliament literally means the House of Commons. Control over finance is the exclusive privilege of the House of Commons; it does not share this power with the House of Lords. It was the Parliament Act of 1911 which formally deprived the House of Lords of its right to amend money bills. It must however be borne in mind that the control of the House of Commons over national finance is nominal only. It has passed over to the Cabinet. The government not only has the monopoly of initiation in financial matters, it has supreme control over the entire process.

The House of Commons has four distinct functions to perform in the sphere of finance. In the first place, it has to examine the estimates prepared by the government departments and pass every separate demand for grant. In other words, it has to provide supplies to the government and to appropriate them to different departments. In the second place, it has to decide the ways and means to provide the necessary funds for the purpose, and determine what new taxes are to be imposed and which old ones reduced or abolished. In the third place, it has to scrutinise and examine the ways in which the funds granted by it have been spent. Lastly, it has to see that the accounts maintained by the spending departments are examined and properly audited. In performing the

last two functions it reviews the entire financial situation of the nation. In what follows we shall make an effort to examine the manner in which some of these highly important functions are discharged.

It is not necessary for our present purpose to study how the estimates are prepared by the various spending departments. We assume the task to have been done. All that is necessary to point out is that from October onwards the departments are in consulation with the Treasury to which the estimates are sent. The departments consider how much money they spent last year and how far the changes in government policy and natural factors like the growth of population will affect the figures for the next year. Every proposal involving fresh expenditure is subject to approval by the Treasury, and no item can be added to which the latter objects. The total of these estimates as finally approved by the Treasury and the sums required for Consolidated Fund services indicate the total expenditure for meeting which revenues shall have to be raised. It should be remembered that items like interest on the national debt, civil list (expenses of the royal household), the salaries and pensions of judges, the expenses of holding parliamentary elections and other charges on the Consolidated Fund are not included in the annual estimates; they are separately shown, and are not annually voted by Parliament. This does not mean that such expenditure is beyond the control of Parliament and is unalterable by it. It is authorised by Acts of Parliament and can therefore be altered by it when occasion demands; it is not however put before Parliament for annual sanction like other items of expenditure which are matters of general policy and hence require frequent readjustment. The total amount of expenditure not subject to the annual vote of Parliament is about one-third of the grand national disbursement. One more point may be noted. After all the estimates have been prepared and submitted to the Treasury, the Chancellor of the Exchequer may sometimes find it necessary to demand a general reduction in view of the estimated income for the next year. After having made up his mind he makes his recommendations to the Cabinet which after a full discussion authorises him to lay the estimates before Parliament with such modifications as may have been agreed upon. The ultimate responsibility for the estimates is thus of the Cabinet and not of the Chan-

cellor of the Exchequer. Any way, as placed before the House of Commons they come from and on behalf of the Government.

It is one of the standing orders of the House of Commons and one of the fundamental principles underlying the British financial system that all demands for grants and motions for a charge upon public revenues (as well as all taxation proposals) must come from the Government. This places the initiative in financial matters wholly in the hands of the government. The Crown asks for money and Parliament votes it. No private member can propose a new item of expenditure, an increase in expenditure on any head, or even the transfer of funds from one head to another. All he can do is to *suggest* to the government to provide money for what he deems necessary, or to increase the grant under a head. The Government may or may not pay heed to his suggestion ; generally it does not. But whereas a private member cannot move an increase in a vote or propose a new demand, the House as a whole has the right to reduce or to refuse a demand made by the Government. According to strict theory the strength of the House of the Commons lies in its power to compel a minister or the government to resign by refusing supplies. But all this is mere form ; despite the budgetary procedure, real control over national finance has passed into the hands of the government. Due to the working of the party machine the power of the House to refuse supplies has become almost a constitutional fiction. By its majority in the House the Cabinet can easily secure the rejection of all motions of reduction to which it may be opposed, to say nothing of the motions of refusal. In actual practice the House gives to the Government whatever it demands for its needs. The control of the House over expenditure has become almost nil. There are several reasons for it.

In the first place, Parliament has never deemed it necessary to limit the authorisation to spend money to one year at a time in all matters. A number of items of expenditure are not subject to its annual vote ; *e. g.*, the Civil List, the redemption of debt charges, the salaries of judges and of the Comptroller and Auditor General. This, however, is not of great importance, and may therefore be passed over.

Secondly, the time allowed for the consideration of all the demands for grants which total upto more than £ 4,700,000,000 a

year ; and voting on them is most inadequate. Only 26 days are allowed for the purpose. For 25 days the House in Supply can debate the various demands for grant ; after the 25th day no further discussion on them is permitted. On the 26th day all the items which might not have been discussed and approved are put to vote and passed without debate. This means that only the more important demands are actually debated ; the rest are voted without any discussion.

Thirdly, the debates in the Committee of Supply are not meant for securing economy and efficiency of administration ; they are meant to serve another and different purpose. Theoretically, their purpose may be to bring the entire administration under review and determine whether it was working efficiently and economically or not. In other words, the debates in the house may be utilised to exercise control over administration and effect economy in it. But the spirit of the debate and the manner in which the accounts of the different departments are kept and their estimates prepared make it extremely difficult for the House to achieve this end. Since the ultimate responsibility for administration is that of the Cabinet, it resists with its docile majority every attempt of the House to exercise control over administration. As was admitted by a Permanent Secretary of the Treasury, 'the control of expenditure, in the sense of securing that the various public services are efficiently administered at a reasonable cost, was no part of the object which they (framers of the scheme of parliamentary grants) had in view.'* The budget debates are rather used by the opposition party for the different purpose of a wide-ranging review and general criticism of government policy and the airing of grievances which may be regarded as their other and main purpose. The student who has ever read the budget debates of the Central Assembly in our own country should easily understand what happens in Great Britain. The member who moves a reduction in the salary of a minister is obviously not actuated by the desire to effect economy or to improve efficiency ; he uses the motion as a cover for attack on the minister's policy. 'They will move that the salary of the Colonial Secretary be reduced by £ 100/- in order to call attention to the policy that is being pursued in Kenya ; they will not investigate the staffing and functions of the Colonial

* Quoted by Ramsay Muir : *How Britain is Governed*, page 227.

office.'* Such debates have their own value; they bring to light the differences between the government and the opposition and compel the government to expound and defend its own policy. The opposition knows all along that in voting it is bound to lose; yet the discussions go on because in fact the debate is more important than the vote. Sometimes it happens that the opposition criticises but abstains from voting against the government.

In the next place, the vast increase in government expenditure and the presence of too much detail in the estimates have contributed towards making parliamentary control over finance more of a formality than a reality. If the purpose of the budget debates is to effect economy, improve the efficiency of administration and bring it under the effective control of Parliament, the estimates and the accounts shall have to be prepared in a different way and the composition of the Committee of Supply altered. The Committee should split itself into as many sub-committees as there are administrative departments and each of them should deal with the estimates of one department only, as is the case in the American Congress. The Committee of the Whole House meeting for 26 days in the whole session is obviously not a fit instrument for achieving the purpose.

Almost simultaneously with the discussion on estimates the House has to consider the government proposals for the raising of sufficient revenues to meet expenditure. And just as it is the duty of the Treasury to prepare an estimate of total expenditure on the basis of the estimates submitted by the various spending departments, so it is its business to prepare an estimate of the probable income for the coming year. Nay, the Treasury is more directly and completely responsible for the estimates of revenues than for those of expenditure, for while the spending departments are not within it, the revenue departments are. When the Chancellor of the Exchequer has been able to work up his plans to raise sufficient revenues to meet the demands and present a more or less balanced budget by proposing new taxes and shifting the burden of old ones in accord with the policy of the Cabinet, he presents the budget with a long speech to the House. This budget speech is perhaps the longest the House hears. It is always interesting and occasionally startling, particularly when it announces some radical departure from the traditional

* Ramsay Muir : *Ibid*, page 229.

canons of sound finance. It is not merely an unfoldment of government plans for the next financial year, but also a review of the past year's income and expenditure, surplus or deficit. It accounts for deviations from the estimated income, and is something like a brief commentary on national prosperity.

A few days after the 'budget speech' the House meets as the Committee of Ways and Means and debates the various taxation proposals of the Government. Just as no private member may increase an appropiation or propose a fresh one, similarly he is debarred by the standing rules from proposing a new tax or enhancing the rate of a tax recommended by Government. All taxation proposals must come from the Government. All that the House can do is to accept the government proposals, reduce or refuse them. Though the government is usually able to carry its proposals through the House with the help of its majority, it sometimes finds it necessary to meet the wishes of the House and accept the modifications suggested. Ramsay Muir points out that the House of Commons *does* control the taxes that are imposed upon the country so far as the Cabinet allows it to do so. It has on occasions forced the Cabinet to withdraw unpopular taxes. The resolutions adopted by the Committee of Ways and Means and reported to the House of Commons are the foundations on which the Finance Bill is prepared. It decides the taxes, both direct and indirect, to be levied during the coming financial year and the rates at which they are to be collected, and also specifies new or additional sources of revenue. Just as not all the appropriations are annually passed by Parliament, similarly all the taxes in force need not be authorised every year. Some of them like death duties, stamp duties and some customs duties are based on permanent Acts and continue from year to year, unless changed or modified by a new Act.

The two great Acts, the Appropriations Act and the Finance Act based respectively on the resolutions adopted by the Committee of Supply and the Committee of Ways and Means, are sent over to the House of Lords after they have gone through all the stages and been passed by the House of Commons. The House of Lords is free to discuss them but has no power to amend or alter them. Whether it accepts them or not they are presented to the Monarch for the Royal assent and become the law of the land on the receipt thereof.

In our own country the annual budgets are presented to the central or provincial legislatures, as the case may be, in January or February and passed before the opening of the new financial year on the 1st of April. The Government is thus armed with the authority of law to collect taxes and spend money. In Great Britain, however, the consideration of the estimates and the revenue proposals is never finished before the commencement of the new financial year; standing order 15 requires that the consideration of the estimates should be completed before August 5. But the work of government has to be carried on. Accordingly the first thing which the House does is to pass various 'Votes on Account' giving the Government provisional authority to withdraw from the Consolidated Fund sums sufficient to enable it to meet its requirements till the budget is passed. All the votes on account are lumped together in one bill which is passed early in the session.

Essential Features of the Financial System.— Before proceeding to discuss the way in which the House of Commons reviews the whole financial position of the nation and assures itself that the funds granted by it have been spent for the purposes for which they are meant, it seems desirable to draw the attention of the reader to some vital features of the British budgetary system. Its great merit is that the whole financial programme is prepared as a unit, the full responsibility for which rests upon a single authority, namely, the Cabinet. This essential unity of the system is due to several causes. The final responsibility for both parts of the budget, the appropriation estimates and the revenue estimates, rests with the self-same authority, *i. e.*, the Chancellor of the Exchequer who works both of them into a coordinated fiscal plan. Further, both the parts are considered by the same body, namely, the House of Commons sitting as a Committee of the Whole House under two different names. The fundamental principle that all demands for grants and all proposals for the raising of revenues must come from the Government and the fact that no vital changes can be made in the budget without the consent of the Government enable it to retain its essential unity. It is not possible for the British Parliament to change the budget into something very different from what it is as prepared by the executive, as is possible for the French Parliament and the United States Congress to do. The fact that the ministers whose financial programme is being discussed in Parliament are always present there to explain and

defend it on the floor also contributes to the same end. There is a demand in the United States that the financial procedure of Congress should come a good deal near to the British plan which has been imitated by many countries in the world and has been regarded as a model by some of its admirers. It has, however, its own defects. Its coherence and unity are to a considerable extent due to the fact that the House of Commons has largely abdicated its control over finances in favour of the Cabinet; its power over the purse is more a matter of form than a reality. It has already been stated that the discussions on appropriations are not conducted with a view to economy and efficiency of administration; they do not turn upon the merits of the financial proposals but resolve themselves into a general criticism of the government policy. This means that the responsibility for checking extravagance falls on the executive and does not rest with the legislature. It may also be pointed out that the 26 days' time allowed for a consideration of appropriation estimates running into millions of pounds sterling is utterly inadequate for the purpose. Large sums of money are voted without any discussion on the last day. This serious shortcoming of the British system can best be stated in the words of the Committee which inquired into the working of control over expenditure. It reported that 'there has not been a single instance in the last twenty-five years when the House of Commons, by its own direct action, has reduced, on financial grounds, any estimate submitted to it ..... So far as the direct effective control of proposals for expenditure is concerned, it would be true to say that if the estimates were never presented and the Committee of Supply never set up, there would be no noticeable difference.'*

The need for some alteration in the system has long been felt, and once or twice select committees were appointed for suggesting the lines on which reform should proceed. But not much came out of their efforts, and the conditions remain much the same as before. Even the highly reasonable proposal that reductions proposed by private members should not be treated as amounting to expressions of no-confidence in the ministry but as business proposals to be discussed on merits has not been accepted.

Parliamentary Control over Disbursements.— The function of Parliament does not end with the passing of the Appropriation Act

* Quoted by Ramsay Muir : *ibid*, page 229.

and the Finance Act; it has further to see that sums collected by the Treasury under the different Acts are spent for purposes approved of by it. This is achieved in the following manner. All national revenues, whether collected under the Finance Act or under permanent Acts, are paid into the Consolidated Fund in the Bank of England. Withdrawals from it can be made only by authorised agencies and only for authorised purposes. The Appropriation Act is the authority according to which the Treasury or the Paymaster General can withdraw money. Before any money can be transferred to the Paymaster General it must be approved by the Comptroller and Auditor General. It is the duty of this high ranking officer to see that all the complicated rules regarding the transfer and use of money are duly observed. He presents annually to Parliament an audited account together with his report in which it is shown that the sums voted by Parliament have been spent on the purposes specified and not otherwise. Before he makes the report he satisfies himself that the payments authorised by him were in accord with the intentions of Parliament and that they have been spent upon the objects to which they were appropriated. It takes the Auditor and Comptroller General about two years to prepare his report. This report is submitted to Parliament and scrutinised by the Accounts Committee.

(iii) Formulation of Policy.— A few words may be added about the role played by the House of Commons in the formulation and control of governmental policy which is described as one of its main functions in the Third Report of the Select Committee on Procedure. While it is true that as a matter of right Parliament expects the government to announce its policy on every domestic and foreign issue there first, it is incorrect to hold that Parliament *formulates* policy. It has no hand in the formulation of policy which is the exclusive concern of the government. Policy is formulated *solely* by the Cabinet; it is merely *announced* in the House of Commons. Though it has no hand in the formulation of policy, the House does exercise a degree of control over it by means of debate and discussion. In this connection one should never lose sight of the fundamental fact that in the British system of government there is a constant interaction between Government which is the initiating and directing element and Parliament which subjects the activities of the Government to the light of publicity and criticism. Whatever degree of control it can exercise over policy proceeds from the fact that it has

the privilege of challenging the policies of the Government and subjecting them to vigorous criticism. Since no democratic and responsible government can afford to ignore public criticism, the Cabinet has to trim its policies in the light of the criticism voiced in Parliament. Even though it has a stable majority in the House and the result of voting on any issue is a foregone conclusion, it cannot disregard criticism. In a debate in the House of Commons in 1940 the Government headed by Mr. Chamberlain won by a majority, but by an analysis of the voting Mr. Churchill showed that it had failed to convince the House of the correctness of its policy ; over fifty Conservatives had voted with the Labour and Liberal opposition. Mr. Chamberlain recognised that his government had lost confidence and resigned.

Since it is through its critical function that the House of Commons exercises some amount of control over governmental policy, a few words about it are necessary.

(iv) The Critical Function of the House.— If British democracy has not suffered decline as a consequence of the transfer of initiative and control from Parliament to Cabinet in legislation and finance, the reason is that the House of Commons continues to perform, and perform adequately and efficiently, its critical function. It still remains the grand forum for public debate and 'a focal point for criticism and discussion'. So long as 'legislation, general policy, and government decisions on particular issues can be regularly examined in full view of the whole country, in a spirit of fair play combined with constant vigilance'*, the British people will continue to enjoy the benefits of democracy. So long as the House of Commons retains its power of free and unfettered criticism of government activities and the government is ready to listen to criticism and pay due heed to it, democracy will remain safe in Great Britain. The critical function of the House of Commons is thus of the utmost significance.

The House performs this most vital function through its debates and discussions the opportunities for which are numerous. It may be mentioned in passing that etymologically the word *parliament* means a place for talking or discussion. The House gets its first opportunity for subjecting to a criticism the general policy of the government in the course of discussion on the 'humble address' in reply to the

* Mathiot : *op. cit.*, page 242.

Speech from the Throne at the commencement of every session. In the course of this discussion the ministers get an opportunity to explain their policies more fully and the opposition benches to criticise them. The budget speech of the Chancellor of the Exchequer gives the private members another occasion to launch their attack upon the government. At a later date discussions in the Committee of Supply on the various demands for grants which are spread over 25 days (the last day is reserved for the voting on items which might have remained undiscussed) provide more opportunities for debates on policy. In addition there are two or three full dress debates on foreign policy during every parliamentary session. Mention may also be made of the right of the private member to move adjournment motions and motions of no-confidence in the government. All these debates serve a highly useful purpose, even though because of the working of the party system and the disciplined majority at the back of the Government, the result of voting is a foregone conclusion in each case. Though the opposition knows that it cannot compel the Government to modify its view, much less dislodge it from office, the discussion has its own value; it is not a waste of time and energy. The debate compels the Government to make its policies public. The knowledge that they would have to face keen criticism in the House and defend their policies makes the ministers careful and cautious. It also enables them to refute the charges levelled against them by the opposition members and thereby prevent the growth of adverse opinion among the public. In its own interest the government has to give the opposition all the facilities for discussion; it should never let the public entertain the idea that the government is afraid of publicity and criticism, or that its policy is weak. The debates in the House produce repurcussions on public opinion outside. 'What is said and written about them in a thousand articles and a thousand speeches is the living material out of which the voters' choice is made.' So wrote Laski in his *Parliamentary Government in England.* There is no doubt that the debates in the House provide the material on the basis of which the electors form their own views about the strength and weakness of the policies of the party in power and give expression to them at the time of the next general election.

The debates on foreign and imperial affairs are, in a way, more important than other debates, because in these spheres the House cannot exercise that much amount of control which it does over the

departments dealing with the internal, social and economic problems through legislation and other ways. They are concerned with momentous issues and questions of policy. It may be added that the debates in the House of Lords on these problems deserve as much attention as those in the lower house. Deliberation and criticism are not the exclusive privilege of the House of Commons like the control over finance.

(v) The House as a Ventilating Chamber.— Closely connected with the function of criticism discussed above is that of ventilating grievances. The House of Commons provides the forum not only for criticism and discussion but also for the airing of public grievances. For three quarters of an hour each day before the commencement of the regular work of consideration of bills private members have the right to put questions to ministers about the administration of their respective departments. The rules of the House provide that every member, other than those who occupy ministerial office, may submit through the Clerk a maximum of three questions which the Government is required to answer. It is true that a minister may decline to answer a question on the ground that it would be against the public interest to answer it. A frequent resort to tactics of this sort is however likely to create the impression that the minister wants to avoid answering questions which is bound to have an adverse effect upon his reputation. It is therefore in the interest of the ministers that they give as satisfactory answers as they can. As has been pointed out in a previous context, there is no more valuable safeguard against maladministration and arbitrary action, and no better way of throwing the searchlight of inquiry and criticism on the doings of the government than this institution of question-answers. We need not add to what we have said on this topic on pages 145–6 above.

Lest members of the House should abuse their power, certain rules have been framed governing the admissibility of questions; *e. g.*, they should not contain any argument, inference, imputation, etc.; they must be put to the minister in whose sphere the subject-matter of the inquiry falls. The enforcement of the rules is left to the Speaker. If a member is not satisfied with the answer given by the minister to his question, he is allowed to put supplementary questions; these should not, however, raise any new question. It may be added that the House of Lords has also set apart some time for questions.

(vi) The Selective Function of the House.— Sidney Low has drawn attention to another function of the House of Commons which is not legally recognized, but is of great significance and interest. The House is 'a place where men are tested for practical statesmanship, and where they are sifted and selected.' To understand and appreciate this function we should compare the House of Commons with the Indian National Congress as it functioned in the pre-independence period. Persons of all sorts and of ability and intelligence joined the Indian National Congress, but not all of them reached the same heights of power and influence. Those who showed certain qualities of character and a certain degree of intelligence made a mark for themselves, first in the town or the district and next in the provincial sphere. If they possessed the requisite talent and capability, they could become all-India figures and leaders of the nation. In the Congress a process went on which enabled persons endowed with qualities of leadership to come to the top, and pushed the smaller men to the bottom. In a similar manner the House of Commons is the field where men are trained and tested for leadership. There is hardly any Indian political leader of repute who did not make his mark in the National Congress; similarly there is no great English statesman and politician who did not rise to fame and power in the House of Commons. The floor of the House of Commons is the battle-ground where any man may fight his way and win the prize it sets before competitors. As has been shown on page 113, one who attains a conspicuous place in the House of Commons and is numbered among its leaders and trusted councillors is counted among the leaders of his age.

Of course, the qualities which enabled a person to rise to eminence in the Indian National Congress in the past are not the same which would help one to shine in the House of Commons; there is bound to be some difference in them on account of the difference of environment and national temperament. It may, however, be said that strong character and vigorous personality are necessary everywhere. Mere oratorical excellence and talent for debate do not suffice. The House would listen with greater attention to a comparatively poor speaker who seeks to say something which he considers to be significant and which he feels deeply than to an orator who speaks merely to bring his name before the public. The clever man who tries to score points does not shine. The capacity for evoking

the sense of trust which transcends the division of parties is a very important quality. Such qualities are possessed by few, and few rise to cabinet ministership and prime ministership.

(vii) The House as a Government-making Organ.— Sir John Seeley once described the House as a government-making organ. It does not, however, seem quite correct to describe it in this way; in the strict sense of the term it does not make any government. It plays no direct role in the choice of the Cabinet or in its appointment. The Cabinet is chosen by the Prime Minister and appointed by the King or the Queen. What Sir John Seeley wanted to convey is brought out by Laski. According to Professor Laski the primary business of the House of Commons 'is to make a government to whom so long as it gives its confidence, it is prepared to entrust initiative.' The chief role of the House at the present time is to keep a government in office by providing it with a majority and entrusting all initiative to it. But however adequate this may be as a description of the actual role of the House at the present time, it cannot be accepted as a statement of what is its true and essential function. We are inclined to agree with Ramsay Muir that the primary function of the House is to exercise control over government on behalf of the nation. It is essentially a deliberative body, a focal point for criticism and discussion. It is the place where national problems are discussed and decisions arrived at. It is also a ventilating chamber where attention is drawn to public grievances and redress sought. To maintain that the chief function of the House is to provide the government with a majority and keep it in office is to belittle its other and more vital activities.

Administrative Legislation.— The foregoing account of the functions and powers of the House of Commons and its legislative and financial procedure would remain incomplete without a few words about what is known as Administrative Legislation. The practice is of continental origin but is rapidly developing in Great Britain. The complexities of modern society render its growth inevitable. It has become very difficult for any legislature, however diligent it may be, to find time to supply all the detailed legislation demanded by circumstances. There are also matters of a complicated and technical nature which can be dealt with intelligently only by experienced administrators. The practice of couching statutes in

general terms and leaving the task of elaborating them to administrative authorities is thus being increasingly adopted. This power given by Parliament to administrative departments to make rules and issue orders and regulations consistently with the purposes of an Act and by means of some clauses in the Act is called *administrative legislation*. The number of Acts passed by Parliament conferring this power is rapidly increasing. In one particular year 60 out of 102 Acts, and in another year 26 out of 43 Acts, contained clauses conferring this delegated power on a number of departments. Poor relief, public health, factory inspection, transport and education are the fields where this type of legislation is widely used.

There are some limitations within which this power can be used. No order issued under an Act can go beyond its bound or be inconsistent with its provisions. The departments, however, sometimes twist and stretch the clauses of an Act to find justification for the orders they might like to issue. There are two safeguards against misuse of this power by a department. In the first place, all such orders and regulations have to lie on the table of the House for a prescribed period. It is open to any member to take objection to them and initiate discussion. The House can modify or annul them. In this way the supreme authority is still of the House. But it is nobody's business to call attention to them, and the prescribed period is allowed to elapse without any objection being taken. In some cases the orders become effective at once but may be invalidated if an objection is made and upheld by the House at a later time. In the second place, they can be invalidated by a court of law if the matter is taken to it by an aggrieved party, and it finds that the authority issuing any particular order has misused its power. The Provisional Orders to which reference was made on a previous page in another connection come under the category of administrative legislation.

Chapter VII

PARLIAMENT (Contd.): THE HOUSE OF LORDS

Introductory.— We now turn to a study of the second chamber of the British Parliament, the House of Lords. It is the oldest and the largest legislative body in the world, much older and bigger than the House of Commons which has however outstripped it in prestige, power and influence. It is the descendant of the Great Council of the Norman Kings which itself was descended from the earlier Anglo-Saxon Witenagemot. Its origins thus go back to more than a thousand years during which period it has had a continuous existence except for a brief interruption. It has passed through many stages. It was once a very powerful body and had all the powers of Parliament; kings took counsel with it on all matters of moment. It succeeded in maintaining this position for a fairly long time. Though its decline synchronised with the growth of the power of the House of Commons, it remained a very powerful body till about the middle of the nineteenth century. Since then it has slowly but steadily lost its former powers and authority, and stands today as a revising and delaying second chamber.

Before the Reform Act of 1832 the Lords were well represented in government, and could even exercise a decisive influence whenever the fate of the Cabinet was in the balance. They had the power to impeach ministers. Some of its members controlled elections to the House of Commons. It is said that at one time in the eighteenth century no less than 427 members of the House of Commons out of a total of 658 owed their seats to the patronage of 218 great landlords. But all this has become past history; the present House of Lords is a mere shadow of its former self; it has been reduced to the status of a *secondary* chamber. It is represented in the Cabinet by only four or five ministers out of about a score; no peer has been a Prime Minister since 1902. Membership of the House of Lords stood in the way of Curzon becoming the Prime Minister. Interesting though the story of the gradual decline of the House in power, prestige and influence is, we cannot go into it here; we are more concerned with its present constitution, powers and functions, and its relation to the House of Commons. We would also briefly touch

upon some of the suggestions made for its reform from time to time.

Constitution of the House.— The House of Lords is the largest chamber in the world having just over 900 members at the present time. There is no limit to its size; the creation of new peerages every year accounts for its ever expanding and bloated size. Not even two hundred years ago it had a strength of below 350. But then its membership registered a sudden and phenomenal increase. Nearly half of the members hold peerages created during the presen t century; as many as 546 new peers were created during the years 1900-49.

The lavish scale on which peerages were bestowed upon persons in the decade ending with 1922 gave rise to a storm of protest, and it was alleged that the honour was being sold to wealthy persons for contribution to party funds. A Royal Commission on honours investigated the matter and submitted its report. No action was however taken on the report, but an Act was passed by Parliament making it a misdemeanour to give or offer, take or ask for any gift or money or an inducement to procure or as a reward for procuring the grant of a dignity or title or honour. It is the prerogative of the reigning Monarch to create new peers on the advice of the Prime Minister who may consult his colleagues in the Cabinet. It is not necessary to state in detail the types of persons on whom the honour is conferred. Suffice it to say that it is bestowed upon distinguished diplomats, military heroes, persons who have achieved distinction in art, literature, science and industry. About one-third of the peers today represent industry and wealth; they include bankers, steel magnates, industrialists and directors of companies. This is why people call it the fortress of wealth.

A person is usually consulted before he is made a peer; he may decline to accept the honour. But if the peerage descends on him through heredity, he has no choice but to accept it. Some Indians were honoured in the past by the conferment of peerages on them. The Speaker of the House of Commons is made a peer on retirement, though one of them declined the honour. Although there are a few women peeresses in their own right, they cannot sit in the House of Lords as hereditary peeresses. Attempts to get them admitted in it have not borne fruit. But under the scheme of life peers adopted in 1958 women are now admitted to the House.

Members of the House of Lords can be easily classified into seven different but unequal categories. (*i*) In the first place, there are the *princes of the royal blood.* They are a mere handful and of no consequence ; they rarely attend the sittings of the House, and if they at all attend, they do not participate in its deliberations. (*ii*) To the second group belong the *hereditary peers of the United Kingdom.* This is the most numerous class, constituting about nine-tenths of the entire membership of the House. This group has become so large because of the lavishness with which new peers have been created during the last hundred years or so. Since old peerages do not lapse— the honour descends from the father to the eldest son— and new peerages are created every year, the size of this group is bound to show an increase every year. Hereditary peers are either English or United Kingdom peers. Scottish and Irish peers sit not as hereditary but as representative peers elected at the beginning of each Parliament. (*iii*) The third group consists of sixteen *representative* peers of Scotland. When Scotland became a part of Great Britain there were about 160 Scottish peers. They were given the right to elect 16 peers from among themselves to the House for the life of Parliament. No new Scottish peers have been created since the Union effected in 1707. The number of Scottish peers has dwindled down to hardly a score at the present time. These surviving peers still elect 16 representatives to the House of Lords for a five year term. When the line of the old peers of Scotland would become extinct, this category would cease to exist. (*iv*) The fourth group consists of *Irish representative peers.* There was a large number of Irish hereditary peers when Ireland was united to England in 1808. They were given the right to elect 28 persons from among themselves to represent the whole group in the House of Lords for life. No elections have taken place since 1922 when the Irish Free State came into existence, and the number of Irish peers at present has been reduced to one. The representation of Irish peers in the House of Lords will pass out even more quickly than that of the Scottish peers. It should be remembered that neither the Scottish nor the Irish representative peers are hereditary members of the House of Lords ; they owe their seats to election. (*v*) The fifth group consists of *26 Lords Spiritual.* Though designated as Lords Spiritual, they are not peers at all, but are ecclesiastical members. The archbishops of York and Canterbury, and the bishops of London, Durham and Winchester are always included among the 26 'Lords

Spiritual'. The remaining 21 seats are filled from among the remaining 28 bishops in order of seniority. Once a bishop is summoned to the House of Lords he retains his seat there so long as he holds a see. Naturally the membership is not hereditary. (*vi*) To the sixth group belong the nine *Law Lords*, or Lords of Appeal. Their number has been recently increased from seven to nine. At one time their number was two only. They are selected from among the best jurists of the empire, and unlike other members of the House of Lords receive an annual salary. They hear appeals from the higher courts in England, Scotland and Northern Ireland and give their full time to judicial work. This is because the House of Lords is not merely a legislative body but has important judicial functions to perform. Their performance is entrusted to the Law Lords. They are *life* members of the House. (*vii*) To the seventh group belong a number of life peers and peeresses created under the Life Peerages Act, 1958. In August 1960, there were 25 life peers of whom five were women. This is the only group which has women members. Before 1958 women were ineligible for membership of the Lords.

It would thus appear that some members of the House of Lords are elected from the constituencies of peers, some are appointed to it on the basis of technical qualifications, while about nine-tenths owe their seats to heredity. Only two of the seven groups are hereditary, the peers of the U. K. and of the royal blood.

Organisation of the House.— Like the House of Commons, the House of Lords also has its officers and committees. The most conspicuous of its officers is the presiding officer called the Lord Chancellor. Unlike the Speaker of the House of Commons he is an appointed officer and is always a member of the Cabinet. Besides presiding over the sittings of the House he has many another duty to perform. He is the Head of the British judiciary and performs judicial functions. What is more curious, he need not be a peer and therefore a member of the House. A non-peer can preside over the Lords because the *woolsack* on which he takes his seat is technically outside the precincts of the House. The point is not important; almost invariably a non-peer is made a peer after his appointment as Lord Chancellor. The more vital thing is that the House has no hand in his appointment. His powers are much less than those of the Speaker of the House of Commons; he has no

disciplinary powers and cannot even determine which peer should have the floor of the House. The members of the House do not address their speeches to the chairman as is the custom in the Commons, but to 'My Lords'. If the Lord Chancellor is a member of the House, he has the right to speak and vote like an ordinary member but no casting vote. Besides the Lord Chancellor, there are other officials of the House; *e. g.*, the Lord Chairman of the Committees, Clerk of the Parliament, and the Gentleman Usher of the black-rod who corresponds to the Sergeant-at-arms of the House of Commons.

The sessions of the House of Lords are coincident with those of the Commons; it sits on Tuesdays, Wednesdays and Thursdays, and sometimes on Mondays, but rarely on Fridays. Its sittings are however not so prolonged as those of the Commons. A great majority of the more than 900 members of the House are generally absent from the sittings and seldom take part in its debates. It is rarely that more than two hundred members attend; the usual attendance is fairly below hundred. But the small group which attends contains men of high attainments with an extensive knowledge of public affairs. They have generally held high and important offices as ambassadors, Governors General of Dominions and India (before 1947), generals, diplomats, or attained success in industry, finance, science, or some other field. The debates of this effective core are generally of a high order, and 'not being carried on with a view to future votes and present constituents, frequently surpass in wisdom and disinterestedness the performances in the Commons.'*

The House of Lords does not make use of a general system of standing committees. Besides the Committees of the Whole House, use is made of select and sessional committees. There is a committee on textual revision, which can be regarded as a standing committee. It is appointed at the commencement of each session. Bills which have been examined by a Committee of the Whole House are referred to it unless the House otherwise directs. Sessional committees consist either of all the members present during the session or a smaller but indefinite number. Select Committees are named by the House itself and appoint their own chairmen.

Powers and Functions of the House.— Although in practice the House of Lords had become much less influential than the House of

* Chrimes : *English Constitutional History*, page 45.

Commons in public affairs after the middle of the nineteenth century, its legal powers continued to be similar to those of the other House till the passing of the Parliament Act of 1911. In theory it remained a coordinate branch of Parliament and shared equal powers with the House of Commons in legislation; no bill could be presented for the royal assent without its concurrence. Any bill other than a money bill could originate in it. It also performed the deliberative and critical functions. It had powers in the sphere of finance also; it could amend or reject financial bills. The Parliament Act of 1911 seriously curtailed some of its powers and made it possible for public bills passed by the House of Commons to be presented to the Monarch for the royal assent without the concurrence of the House of Lords under certain conditions. The provisions of the Act would be discussed in a subsequent section; here we would set forth the powers the Lords enjoy at present. They can be best studied under the following heads: legislative; deliberative and critical; financial; handling of private bills; and judicial.

(*i*) *The Legislative Function.*— Before the passing of the Parliament Act of 1911 the House of Lords was a coordinate branch of Parliament having the right of initiation, amendment, and rejection on a par with the House of Commons as regards all measures, public and private. It could not initiate money bills but could discuss, amend and reject them. In actual practice, however, few bills of importance were introduced in the House; the centre of gravity had shifted to the House of Commons. The convention had grown up that money bills could be merely discussed by it and were to be accepted or rejected without any amendment or alteration. The power to reject a money bill was not usually exercised.

After the Parliament Act of 1911 it has become impossible for the House of Lords to put an insurmountable obstacle in the way of the Commons; its concurrence is no longer necessary for the presentation of a public bill for the royal assent. It is no longer a coordinate branch of the British Parliament; it has definitely been reduced to the status of a revising and delaying chamber. The Act of 1911 gave it a suspensive veto of two years in the case of non-money bills; the period has been reduced from two to one year by the Act of 1949. In the case of a money bill it could delay passage by one month only.

In the legislative sphere the principal role of the House of Lords is restricted to a revision and re-examination of bills passed by the House of Commons; it has almost lost the right of initiating bills. It is only measures of a non-controversial nature which start their career in it. The work of revision and amendment is, however, not unimportant. On account of the growing subservience of the Commons to the Cabinet and the increasing use of 'guillotine' to stop discussion there, the need for a thorough revision and criticism of the bills passed by it has become all the greater. The House of Commons is usually too busy to find sufficient time for a thorough discussion of the measures that throng there. Moreover, the cracking of the party whip makes discussion in the Commons less free. The result is that many weaknesses and defects remain lurking in the bills passed by it. The House of Lords is not so hard pressed for time; the outlook of its members is not limited by the necessity of keeping the party in office. They have no present constituents to please and no future voters to care for. They can carry on their discussions in a disinterested way. It is therefore a very suitable instrument for revision and amendment. The minority of its members who participate in its deliberations are usually men of eminence. In the case of a major bill as many as 200 amendments are sometimes moved. Some of them are without partisan bias and are generally accepted by the Government and the House of Commons. The fact that an overwhelming majority of its members at the present time belong to the Conservative party, however, takes away a good deal from its value as a revising chamber. It performs this function very well when the Conservative party is in power; but when either the Labour party or the Liberal party is in the saddle, its character as 'the fortress of wealth' comes into play and it tries to hamstring the liberal policy of the government. Since it has lost its bipartisan character and is dominated by one party, it is bound to be unsympathetic and even hostile to the policies of a progressive government. The way in which the House of Lords treated the measures of the Liberal party under Gladstone and Asquith was mainly responsible for the Parliament Act of 1911. The fear that the House might delay the implementation of its policies induced the Labour Government to put on the statute book the Parliament Act of 1949 which reduced its suspensive veto from two to one year in the case of non-money bills. The composition of the House must be radically altered if it is to

discharge the function of revision and amendment properly and efficiently.

(*ii*) *Deliberative and Critical Functions.*— At the present time the House of Lords performs a more useful task as a deliberative assembly than as a legislative body. Professor Zink describes it as a 'national sounding board' for great national issues. The presence of many men of eminence and experience who can speak with knowledge and authority on foreign and imperial affairs makes its debates on broad issues of national policy very highly impressive; they are generally of a high order and are conducted in a calmer atmosphere and in a leisurely way, and are less liable to be swept away by temporary gusts of passion. Sometimes they reach 'a level of incisiveness and thoroughness not often encountered'.* Visitors are sometimes more impressed by the quality of debates in the upper than in the lower house of the British Parliament.

(*iii*) *Handling of Private Bills.*— We saw in the preceding chapter that British procedure draws a distinction between private and public bills the like of which does not exist in our country or in the United States. Private bills continue to be numerous and even important in Great Britain. The House of Commons is too busy a body to find sufficient time for their proper consideration. The practice of referring them to the House of Lords has therefore grown up in recent years. The House gives them careful consideration and relieves the House of Commons of considerable burden. The Commons find it very easy to dispose of private bills after they have been considered by the Lords. The Parliament Acts of 1911 and 1949 leave untempered the power of the House of Lords in the sphere of private bills.

(*iv*) *Financial Function.*— Before the Parliament Act of 1911, theoretically the House of Lords had equal and concurrent powers in the sphere of finance except that it could not originate a money bill. It could amend and reject financial bills passed by the Commons and sent to it for consideration. But it did not use this power. In practice the supremacy of the House of Commons in finance was admitted. The Parliament Act has made that supremacy legal. Now the House of Lords can discuss money bills sent to it from the lower House and may, if it so likes, reject any or all of them. This

* Zink : *op. cit.*, page 103.

rejection however has no significance. A money bill is presented to the Queen for her assent after a month from the date of its receipt, if the House fails to adopt it. It is not authorised to make any amendment to a money bill.

(*v*) *Judicial Function.*— In addition to being a legislative and deliberative body, the House of Lords is also a court of law. It is the supreme law court for Great Britain, her final court of appeal. In the past it heard the impeachments of men like Warren Hastings (1787) and Lord Melville (1805). It has not been called upon to discharge this function since 1805 which may be said to have become obsolete. It also used to try the peers for felony; this function also has been taken away from it. At the present time it hears appeals in civil cases only upon permission of the Court of Appeals. Because of the high expenses involved, such appeals are not very frequent. In criminal cases a final appeal to the House is possible, but only if the Attorney General certifies that the case raises a point of law of exceptional public importance.

In view of the fact that the House as a whole does not participate in the judicial function which is performed by the Lord Chancellor and the nine Law Lords, it need not be considered as one of its regular functions. The House of Lords sitting as the supreme court for Great Britain is quite distinct from the House functioning as a legislative and deliberative body. The former sits in the morning before the latter begins its work in the afternoon. There is no reason why the two functions should be combined together, but there they are. Even the Parliament Act did not take away the judicial work from the House.

(*vi*) It may be added that the government is not in any way responsible to the House of Lords; it is accountable only before the House of Commons. The upper chamber is not in a position to exercise control over the cabinet directly or indirectly.

Privileges and Obligations of the Members.— Members of the House of Lords enjoy freedom of speech and freedom from arrest while the House is in session like the members of the House of Commons, and are also immune from jury service. A person who has once received summons to attend the House as a peer of the United Kingdom can always claim to be invited as a matter of right. He transmits this right to his eldest son by heredity. Every peer has

also the right of individual access to the Monarch, though it is not exercised now. Every peer could also claim to be tried by his equals, *i. e.*, by the House of Lords for offences committed by him. But as this right was abused in a number of cases, it has been taken away. Except for the Irish and Scottish peers who are not members of the House of Lords, no peer is entitled to contest a seat in the House of Commons. He cannot even be a voter. No salary is paid to the members of the House of Lords except to the Law Lords. Since 1957, however, a daily allowance of £ 3 3 sh. is paid for each day's session to those who attend it.

Relation between the Two Houses.— As has been indicated more than once in the course of the preceding narration, the relationship between the House of Lords and the House of Commons has varied from time to time. At the commencement, the House of Lords was the *upper* and the House of Commons the *lower* chamber in the true and literal sense of the terms. Even when the former acquired power and influence, the latter continued to enjoy equal and concurrent powers, though it was admitted that the Commons should have dominance in the sphere of finance. Inspite of this parity the Commons continued to be the *lower* house till about the end of the eighteenth century. In the words of Herman Finer the House of Lords was superior to the House of Commons 'in every aspect of government legislative, critical of policy, formative of ministries.' There were two main reasons for this superiority. First: the House of Lords was filled with landed aristocracy of the realm and was an august body; most of the high offices of the state were held by peers. Second: there was no constitutional challenge from the House of Commons, because more than one third of its members were proteges of the peers, sitting for pocket constituencies from which they were nominated by their patrons. The same official class dominated both the chambers; and therefore there was no struggle for power between the two. The real political struggle was between King and Parliament, and not between the House of Lords and the House of Commons. This state of affairs was seriously disturbed by the Reform Act of 1832 over which a conflict raged between the two chambers which ultimately ended in a victory for the Commons. Since then, with its progressive democratisation the House of Commons has been able to establish its superiority over the House of Lords which tended to become more and more something like a

true *second* chamber. The House of Lords had to learn from the Duke of Wellington the unpleasant and bitter lesson that it must not resist the 'will of the people' as expressed in the House of Commons, and must confine itself to amending or delaying objectionable projects of change, rejecting only those measures in which no great interest was taken by the electorate. The comparatively less influential position of the House of Lords *vis-a-vis* the House of Commons was reflected in the fact that with the passage of time it became more and more difficult for the Prime Minister to belong to the Lords, and the number of cabinet ministers belonging to it decreased. Inspite of all these developments, the House of Lords continued to enjoy in theory equal and coordinate powers with the House of Commons until it precipitated a conflict with the latter which led to the passing of the Parliament Act of 1911, which reduced it to the status of a secondary chamber which it had become long ago in practice. The circumstances which led to the passing of the Parliament Act of 1911 deserve to be described ; they throw a flood of light on the mutual relations between the two chambers at that time.

Although the need to reform the House of Lords was long felt, and a bill to that purpose was introduced as early as 1719, no serious attention was paid to the problem. So long as it remembered the advice of Lord Wellington and desisted from challenging the authority of the House of Commons, there was no active opposition to it and it was allowed to retain its powers. It can be said that its strength lay in its weakness. The moment it tried to assert itself and tried to put obstacles in the way of the Liberal government, the movement to mend or end it started. The issue was raised by the opposition of the Lords to the Irish Home Rule Bill of 1886; matters were made worse by the Lords' rejection of the Education Bill designed to abolish religious tests for teachers and to give public authorities control of religious education, and of the Land Valuation Bill intended to pave the way for a land tax. In 1909 the Lords rejected the Finance Bill introduced by Mr. Lloyd George which sought to impose heavier burdens on land and other forms of wealth. The Asquith Government resigned, appealed to the country, and was returned to power again. The Lords yielded and passed the Finance Bill which they had previously rejected. The Liberal Government did not want any repetition of the phenomenon, and so staked its existence on the

issue of curtailing the powers of the House of Lords. A second general election was held in 1910 almost entirely on the issue of the powers of the House of Lords; and the people once again supported the Liberals. The Parliament Act of 1911, whose provisions would be described in the next section, was the result of the Liberal triumph. The way in which this Act was placed on the statute book illustrates what was said on page 12 above, namely, that before making vital amendments to the constitution Parliament sounds public opinion. The net result of the Act of 1911 was to deprive the House of Lords of its equality of powers with the House of Commons and to reduce it to the status of a secondary chamber in legal theory.

Parliament Act of 1911.— The Parliament Act of 1911 occupies a very important place in British constitutional development; it wrought one of the greatest changes ever made in it by deliberate enactment. It made the House of Lords a secondary chamber in theory which it had been in practice for the preceding half-a-century or so. It achieved this purpose by depriving it of equality of status and powers with the House of Commons and making it a mere revising and delaying chamber. Its main provisions can be summed up as follows :

(*i*) In regard to money bills it provided that if having been passed by the House of Commons and sent to the House of Lords at least one month before the end of the session, such a bill was not passed without amendment within one month after it had been sent up to that House, the Bill would be presented to His Majesty and become an Act of Parliament on the royal assent being signified, notwithstanding that the House of Lords did not assent to it. This provision implies that a money bill can originate only in the House of Commons. It also implies that the House of Lords has the right to consider a money bill after it has been passed by the House of Commons and sent to it, and can either accept or reject it, but has no power to amend it in any way. If a money bill is not passed without amendment by the House of Lords within one month from the date of its receipt, it is presented to the Monarch for the royal assent and becomes law on receiving such assent. In other words, the only thing the House of Lords can do in regard to a money bill is to delay its passage by one month at the most.

The Act defines a money bill as a bill which relates to taxation,

appropriations, loans, and audits. The power to decide whether a given bill is a money bill or not for the purposes of the Act is lodged in the Speaker of the House of Commons.

(*ii*) In regard to public bills other than money bills it provides as follows: If a non-money bill is passed by the House of Commons and is rejected by the House of Lords or accepted with amendments not acceptable to the House of Commons, and is again passed by the House of Commons in the next session and is again rejected by the House of Lords, and is passed by the Commons for the third time, and again rejected by the Lords; it shall be presented to His Majesty for the royal assent, despite the opposition of the Lords, provided that at least two years have elapsed between the date of the second reading of such a bill in the first session of the House of Commons and the third reading or final passage of the bill in the third session. In other words, it provided that if a non-money bill was passed by the House of Commons in three successive sessions and was rejected by the Lords each time, it could become law on receiving the royal assent. The only condition was that at least two years must have elapsed between the second reading of the bill in the Commons in the first session and its third reading in the third session. This means that the House of Lords has been completely deprived of its former power of successfully obstructing the will of the House of Commons. In the past if the House of Lords rejected a measure passed by the Commons or amended it in ways not acceptable to the latter, it lapsed. The Parliament Act has changed all this; it has made it possible for a determined House of Commons to over-ride the Lord's opposition and get a bill in which it is interested placed on the statute book without the latter's concurrence. It was a radical change; it severely curtailed the power of the Lords to obstruct the wishes of the Commons. All that the Lords could do was to delay legislation by two years at the most; their power of absolute veto was replaced by a two years' suspensive veto.

(*iii*) The power of the House of Lords to reject any bill providing for an extension of the maximum duration of Parliament beyond five years is left unimpaired by the Parliament Act of 1911. The Act reduced the term of Parliament from seven to five years.

(*iv*) The Parliament Act does not deal with private bills. It may therefore be inferred that the power of the House of Lords to vote

private bills passed by the House of Commons stands untouched.

It would not be out of place to critically examine the above-mentioned provisions, particularly the provision in regard to non-money bills, and to see what exactly was the achievement of the Parliament Act of 1911. It is clear beyond a shadow of doubt that it deprived the House of Lords of parity of legislative powers with the House of Commons and reduced it to a secondary position and made it a true *second* chamber. As Ramsay Muir put it, 'the House of Lords was bitted, bridled and reduced almost to impotence'. That the House of Lords was 'bitten and bridled' is obvious enough; it is not equally true to say that it was reduced almost to impotence. We feel inclined to agree with Professor Laski that its ability to do mischief to a Labour Government was immense. It was the recognition of this fact which led the Labour Government to introduce a bill in the Commons in 1947 proposing to reduce the suspensive veto of the House of Lords from two years to one. This measure was passed under the terms of the Parliament Act of 1911, after having been rejected by the Lords thrice in the course of two years, and came to be known as Parliament Act of 1949. Let us study the reasons which led the Labour Government to put it on the statute book.

Parliament Act of 1949.— There can be emergency measures which would lose much of their value and significance if their passage is delayed by two years. For example, a very annoying and intriguing situation would have arisen if the House of Lords had rejected the Independence of India Act of 1947. This is particularly the case in regard to measures passed by the House of Commons within the last two years of its life. Rather than see them postponed indefinitely, the Government would perfer to accept amendments made by the Lords even though they may not be to its liking. Moreover, it was not at all an easy thing to comply with the requirements of the Act of 1911. By repeatedly throwing out a measure the House of Lords might be able to rouse public opinion against it or otherwise compel the Government to modify it along lines acceptable to itself. It is interesting to note that in many cases the House of Lords successfully obstructed many a liberal Government measure even after the passing of the Act. In 1913 and 1914 it prevented the abolition of plural voting, and in 1913 it rejeced the Irish Home Rule Bill. In 1931 the Lords threw out the Education Bill

which provided for the raising of the school-leaving age to 15, as well as the Agricultural Land Utilisation Bill which sought to give the Ministry of Agriculture power to experiment in large-scale farming.

The House of Lords fought bitterly against the bill introduced by the Labour Government which sought to reduce its power to delay from two years to one. It could be placed on the statute book only under terms of the Act of 1911. According to the Parliament Act of 1949 the Lords can reject a bill only once. If it then passes through the Commons in a second session, it can receive the royal assent provided one year has elapsed between the second reading in the first session and the third reading in the second session. Even after the passing of the Parliament Act of 1949 the House of Lords remains in a position to bring pressure to bear on a liberal or progressive government. Throughout 1949 the House insisted on amendments to the Iron and Steel Nationalisation Bill with the object of postponing the evil day, and the Labour Government had to give in on many a point. As Mr. Morrison says : 'Debates in the Lords have a charac- and importance of their own and are not without influence on public opinion and Government policy.'

Grounds of Dissatisfaction with the House of Lords.— The paring down of the powers of the House of Lords by the Parliament Act of 1911 and by that of 1949 has not silenced the voice of criticism against it; the main grounds of dissatisfaction against it still exist. As at present constituted, it is an indefensible anachronism in a democracy. Assuming for the time being that a second chamber is necessary for (*i*) the revision and examination of bills passed in the lower house which is obliged to act under special rules limiting debate, (*ii*) interposing so much delay in the passing of a bill into law as may be needed to enable the nation to express its opinion on it adequately, (*iii*) the initiation of bills of a non-controversial nature, and (*iv*) for the full and free discussion of large and important questions such as those of foreign policy, it can be maintained that a house of about 900 members, about nine-tenths of whom are hereditary, is the least suitable instrument for realising the aforesaid objects. Its predominantly hereditary character and bloated size make it a fit target for attack. The first makes it an anomaly in a democratic system ; it provides a good basis for the witty remark, that while the House of Commons represents everybody, the House

of Lords represents nobody. In the second place, while certain groups and interests like large landlords and big business are over-represented in it, other sections of society like the middle class are either not represented at all or very scantily represented. This feature is closely connected with the fact that the House has become a fortress of wealth. There is no great national industry whose leadership is not represented in it on the political side. Thirdly, the House has lost its bi-partisan character; it is largely wedded to the principles and policies of a single political party. For all practical purposes it is an 'outpost of the Conservative party'. When a Conservative government is in office, the House performs its work of revision and criticism very well; but when the Liberal or the Labour party is in power 'there sweeps into view its character as the "common fortress of wealth". It becomes the reserve power of the Conservative Party, determined to correct the consequences of a progressive victory at the polls, so far as lies in its power.'* This is perhaps the most serious charge to be levelled against it. Fourthly, its prestige has been largely undermined by the fact that a very large proportion of its members do not take their work seriously; most of them are generally absent. Its normal attendance is much below hundred, and in the course of two decades there were only thirteen occasions when the attendance rose to more than two hundred. Added to this is the fact that most of the new peers bought their seats for money contributed to party funds. It should also be noted that when the House of Commons was being democratised, the House of Lords stood still and retained its hereditary and aristocratic character. In consequence it continued to be the bulwark of conservatism, hostile to forces which menace the established order, and identified itself with agencies which seek to perpetuate aristocracy. Obviously such an institution cannot but evoke criticism on the part of the democratic elements.

Proposals for Reform.— Since the time the consequences of the great Reforms Acts of 1832, 1867 and 1884 became apparent, the question of reforming the House of Lords has been engaging the attention of British statesmen. Proposals have been made from time to time; they have generally been in the direction of (*i*) denying the claim of hereditary peers to govern, and (*ii*) admitting the

* Laski: *op. cit.*, page 114.

validity of the representative principle. The first such attempt was made as early as 1869, when Lord Russell's Bill provided for the creation of *life peers* up to the maximum of 28. It was defeated. Lord Rosebery made another attempt in 1874, and Rosebery and Salisbury together again in 1888. Nothing came out of them. The next attempt was that of the Asquith Government which resulted in the Parliament Act of 1911. This Act was declared to be only a stage towards more fundamental reforms and confined itself to immediate tasks. The Preamble to it read as follows: 'Whereas it is intended to substitute for the House of Lords as it at present e xists a second chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation.....' But it was not before 1917 that steps could be taken to implement the promise contained in the preamble, when a representative committee presided over by Lord Bryce was appointed to suggest reforms. The Committee went into its work thoroughly and submitted its report in 1918. With a view to the maintenance of continuity between the reformed and the present House of Lords, and in order to provide representation to major political parties and make it accessible to all the citizens, it suggested the following: (*i*) its strength should be reduced to 327; (*ii*) 81 of the members should be elected from among the whole body of peers by a standing joint committee of the two houses; (*iii*) the remainning 246 members should be chosen by members of the House of Commons arranged into 13 groups, each group being asked to choose its own appropriate quota. All the members were to be elected for a term of 12 years, one-third of each of the two main groups (81 peers and 246 members eleeted by the 13 electoral colleges) retiring every four years. No single House of Commons was to elect more than one-third of the 246 members. The whole scheme was thus to be put into operation by degrees; but it was never translated in action. In 1922 Mr. Lloyd George submitted to the House of Lords a number of resolutions embodying some of the recommendations of the Bryce Committee report, but they also were put into cold storage. In 1929 Lord Cave submitted another scheme to reform the House of Lords in order to strengthen it against the House of Commons. It met with stiff opposition from all sides. Lord Clarendon introduced yet another scheme the same year but it also failed to win approval. In December 1933, Lord Salisbury introduced a bill

providing for the reduction of the members of the House of Lords to 329, 150 of whom were to be hereditary peers, 150 to be elected from outside the peerage, and the rest to be Royal Peers, Law Lords and a few ecclesiastics. It sought to give great powers to the House of Lords by providing that if a measure was rejected by it thrice by an absolute majority of the whole house, the decision should rest with a new House of Commons. The Bill did not reach the final stage.

Whilst the bill which later on became the Parliament Act of 1949 was before the House of Commons, a group of conservative peers headed by the Marquis of Salisbury thought of a plan for reforming the House of Lords. Its central idea was to abolish hereditary membership of the House and reduce its size. An all-party conference discussed the general problem of the House of Lords. The conference came to some agreed conclusions in regard to its membership. It was agreed that the size of the House should be substantially reduced and hereditary membership eliminated. All its members, peers as well as commoners, were to be appointed on the basis of personal distinction or public service, and women were to be admitted. It was also agreed that no party should have a permanent majority in the House and that peers who were not members of the House should be allowed to contest election to the Commons. There was however no agreement about the question of the powers of the reconstructed House of Lords.

Conservative members insisted that the bill seeking to restrict the suspensive veto of the House from two to one year which had been passed by the House of Commons should not be proceeded with further. The Labour Government did not accept this proposal and went ahead with its bill. The proposal to reform the Lords thus fell through.

When the Conservative party came to power in 1955 the announcement was made in the Speech from the Throne in 1956 that it intended to bring in legislation with a view to reforming the House of Lords. In October 1957 the Conservative Government did place some proposals to reform the House. They contained the following points: (*i*) that a limited number of life peerages should be created in the House of Lords; (*ii*) that women should be made eligible for its membership; and (*iii*) that its members should be given some

reasonable allowance for their services. It is surprising that there was no mention of either reducing the size of the House or abolishing its hereditary membership. In the course of the debates that took place on the Speech from the Throne in both the Houses it was made clear on behalf of the Conservative Government that the number of life peerages to be created was not to exceed ten in an year. No bill was introduced in Parliament and the House remains as unreformed as before except for the fact that in 1958 life peers were added to it.

The question naturally arises as to how it is that in spite of so many attempts the House of Lords has not been reformed as yet. The chief reason for this failure is the inability of the various parties to agree among themselves as to the principles on which it should be reformed. Almost all Britishers are agreed that the House needs reform; but wide differences make themselves manifest as soon as the question is mooted: What reforms are to be introduced? The Conservative party wants to restore to it the power snatched away from it by the Act of 1911, because it is the only and the most effective weapon wherewith it can fight a socialist government. It regards socialism as a highly dangerous thing and therefore desires a strong second chamber powerful enough to prevent socialistic measures from being placed on the statute book. The Labour party, speaking generally, wants to abolish it altogether; it regards it as a reactionary chamber, as a 'fortress of wealth', and therefore a serious obstacle in its way. At its annual conference held in 1934 it formally adopted a resolution for its abolition. One of the members in the course of his speech remarked that the House of Lords was an institution which could not be reformed or amended; it could and must be ended. Whatever remains of the Liberal Party stands for (*i*) the reform of its membership so as to destroy its hereditary character, and (*ii*) the continuation of the restrictions imposed upon it by the Parliament Act. The House has therefore endured so long because the British statesmen could not agree upon something to take its place. But whenever Labour feels that its position in the country is strong, it may ask for a mandate for the abolition of the Lords and an improvement of the procedure of the Commons. Into the question whether it is desirable to abolish the House of Lords or not we need not enter here. We may simply note that it is so deeply rooted in British history and character that it would be no easy matter to abolish it. Its functions as a 'senate' on which Sidney Low

has laid stress are important and useful; if it were abolished, something would have to be put up in its place. It would be more in accord with British tradition and current practice to reform it in such a manner as to destroy its overwhelmingly hereditary and conservative character.

It may be added that even though the Labour Party had been pleading for the reform of the House of Lords for the last forty years and more, the Parliament Act of 1949 placed by it on the statute book did nothing to modify the composition of the upper chamber, when it had the power to do so. There seems to be a change of mind in the Labour Party; it no longer wants to abolish the House of Lords. Since it did not prove very obstructive to its legislative measures, the Labour Government wisely decided not to stir up a major controversy.

Chapter VIII

PARLIAMENT AND GOVERNMENT

Introductory.— In the preceding five chapters we have described the constitution and working of two important organs of the British Government— the executive and the legislature—, and also briefly referred to the relationship existing between them. In view of the importance of the subject we propose to discuss it at great length here, even though it may involve a little of repetition.

The Theoretical Supremacy of Parliament.— In the British Constitution the legislature and the executive do not occupy a position of equality as they do in the Constitution of the United States of America; to the former is assigned a definitely superior status. The sovereign authority of Parliament is one of the basic and fundamental principles of British constitutional theory. It can be interpreted in two ways. According to Sir Edward Coke it signifies that the power and jurisdiction of Parliament cannot be confined within any bounds either for persons or causes. The legislative authority of Parliament extends to all persons, to all places and to all events within the British Empire. Sir Edward wrote before the passing of the Statute of Westminister which declares that no Act of Parliament can extend to any Dominion unless it is expressly declared in that Act that the Dominion has consented to its enactment. Even before the Statute of Westminster was passed the transcendent and absolute authority of Parliament existed in theory only; it had no relation to realities. We are not interested in this interpretation of the principle here; our concern is more with the other meaning according to which Parliament is regarded as the *supreme* organ of government in Great Britain. According to strict theory Parliament enjoys sovereign powers.* As sovereign body it is credited with absolute control over all legislation and taxation and expenditure, and is also expected to exercise control over the entire administration through its servant and instrument, the Cabinet. It

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* Parliament is sovereign in the sense that there is no legal limit to its authority to make any law it likes. There is no supreme constitution whose provisions it is bound to observe and obey, and there is no higher authority which can declare its acts unconstitutional. See above, page 112.

is supreme because the Government is accountable to it for every act; because it can compel the latter to resign by refusing supplies or by a vote of no-confidence. The supremacy of Parliament over the executive is involved in the very nature of the parliamentary form of government. The Duke of Devonshire gave a classical expression to this theory of Parliamentary supremacy in the following words: 'Parliament makes and unmakes our Ministries; it revises their actions. Ministers may make peace and war, but they do so at pain of instant dismissal by Parliament from office; and in affairs of internal administration the power of Parliament is equally direct. It can dismiss a Ministry if it is too extravagant or too economical; it can dismiss a Ministry because its government is too extravagant or too lax.'

The Authority of Parliament in Practice.— Such is the theory of the absolute and sovereign authority of Parliament. Facts however are otherwise; in actual practice Parliament has never been omnipotent, and it is certainly not omnipotent now. Even in the heyday of its power its authority was not absolute; it was not quite free to do as it liked. Its hands were tied by forces outside itself. There was a period when its power was limited by the superior authority of the ruling monarch above it; and at the present time it has become subservient to the Cabinet which has annexed many of the powers which nominally belong to it. At all times it has been bound by its own precedents and traditions; and the pressure of public opinion has always been there to apply brakes to its activities. The very multiplicity of the tasks it has undertaken puts limitations and restraints upon its capacity to perform them with a measure of efficiency. The absolute authority of Parliament has hardly any existence outside text-books written decades ago. What has been said in a previous chapter about the way in which Parliament makes laws and controls national finance should suffice to give the reader a fair idea of the very limited role it plays in the two spheres in which it is alleged to exercise transcendent authority. In legislation the initiative and leadership have passed completely into the hands of the Cabinet. The Cabinet not only decides what measures are to be introduced in Parliament and the order in which they are to be dealt with, but is also responsible for the preparation of their drafts. It explains, defends, and pilots them successfully through all the stages in their parliamentary career. There

is hardly any chance for a private member's bill being placed on the statute book unless it receives government support. It is not thus untrue to say that Parliament does not initiate or make laws; its role is confined to giving assent to whatever is proposed by the Cabinet (subject of course to such alterations and modifications as the Cabinet may be induced to accept). In this connection it is interesting to note that it is the Cabinet and not Parliament which is praised or blamed for good or bad laws. In the eyes of the public the responsibility for legislation lies with the Cabinet and not with Parliament. To this we may add that the great bulk of legislation now takes the form of Orders in Council which are largely beyond the effective control of Parliament. This is a consequence of the practice of Delegated Legislation. In the sphere of finance the control of government is even greater; the financial proposals as put forth on behalf of the Cabinet can be modified against its will only by defeating the government which is an almost impossible phenomenon. The power of the House of Commons to dismiss a ministry by refusing supplies is a constitutional figment.

Parliament has lost to the Cabinet not merely in legislation and finance but all along the line. It is not capable of exercising proper control over the government on behalf of the nation. It should be remembered that it is not its function to govern the country and assume direct responsibility for administration; these are the concern of the Cabinet. It does not determine how the various departments shall be organised and how large their staff shall be; and it does not control appointments and dismissals. It is however expected to examine the work of administration and satisfy itself that it is being efficiently and economically done, and that the orders and regulations issued by the departments under authority delegated to them by Parliament are proper and valid. On account of the growing 'dictatorship' of the Cabinet, the growth of bureaucracy, and several other factors among which may be included the way in which accounts are kept and estimates presented and discussed in the House of Commons, Parliament finds itself handicapped in the discharge of this highly important function. Its control over administration is highly ineffective. The only means at present open to Parliament to keep the ministers and their subordinates upto the mark are questions, debates and discussions on government resolutions, motions of adjournment and no-confidence. Unfortunately they do not take

it far enough in the direction of furnishing that amount of inquiry and criticism which is necessary for exercising effective control. The Cabinet has grown powerful at the expense of the House of Commons.

There is another way also in which it can be proved that the authority of Parliament cannot be absolute under the present conditions, that the supremacy ascribed to it is theoretical and not factual. As was pointed out in Chapter VI, for all practical purposes the House of Commons is Parliament, the authority and power of the latter can never be greater than that of the former. An examination of the manner in which the House of Commons transacts its business clearly shows that whenever the government has a majority in it, its power is the power of the government itself. Since the latter can never be absolute, the former also must be equally limited. Behind both the Government and the House of Commons stands public opinion to limit and restrain their activities. One may therefore say that it would be nearer the truth to talk about the diminishing and limited power and importance of Parliament to-day than to assert its omnipotence and sovereign authority. If the principal change effected since the Revolution of 1688 was the 'virtual transfer of the centre and force of the state from the Crown to the House of Commons', one might as well hold that the most significant development in British constitutional practice made since 1832 is 'the tendency to shift this centre and force from Parliament to the Cabinet and to render the latter amenable to the control of the constituent bodies themselves rather than to that of their elected representatives.'* The increasing dominance of the Cabinet is perhaps the most important single political development of the last eight decades or so. In this connection it is well worth remembering that there is a school of thought in Great Britain of which Mr. Amery is one of the leading exponents according to which British Government is government of the Cabinet not under the direction and control of Parliament, but with its assent. The present position is a restoration of the older order in which the Crown was the supreme authority with the difference that today the Cabinet is responsible to the country at large and is powerfully influenced by public opinion. The confidence reposed by the Parliamentary majority in the Cabinet is regarded by

* Sidney Low: *op. cit.*, page 53.

many as the secret of the British system. Many consequences have flown form the domination of the Cabinet, the more important of which are noted below.

Merits and Demerits of the Cabinet Domination over Parliament.— In the first place, it has given to Parliament a highly integrated leadership in legislation, which stands in sharp contrast to the divided and precarious leadership found in many European and American states. The legislative programme of Parliament is drawn up by the Cabinet every session and pushed through with the help of its majority. It cannot be side-tracked or mutilated as is possible across the Channel or on the other side of the Atlantic. Secondly, it has impressed upon the British financial programme a great unity and coherence. This point has already been stressed.* Thirdly, it has contributed a good deal to ministerial stability in Great Britain which again is sharply contrasted with the rapid succession of governments in France. These are certainly great advantages which England derives from the way in which the cabinet system is operating there. They are, however, counter-balanced by some serious disadvantages. Great Britain is required to pay a fairly heavy price for the advantages she is deriving from the dominant position of the Cabinet. In the first place, it has meant a loss of spontaneity and independence on the part of Parliament in the exercise of its legislative and other functions entailing a decline in its prestige and dignity. As the authority of the Cabinet has increased, that of Parliament has decreased. In the second place, backbenchers do not take the same interest in the proceedings of the House as was taken by them before; there has been a falling off of their interest in what goes on. This is due to several causes, the most important of which is the feeling that the debates in the House are futile so far as the form and fate of the measures before it are concerned. The average member realises that his influence on legislation is little greater than that of a private individual outside. In this respect he compares very unfavourably with his compeer in the French Chamber of Deputies (now National Assembly) or in the American House of Representatives. The latter retains his liberty of action to a far greater degree and can help turn the tide in debate or voting by his independent action. The degree to which the private member of the

* See above, pages 120 ff.

British House of Commons has foregone his liberty of action is indeed amazing ; it is not easy to find a parallel to it except in countries living under some form of dictatorship. Another consequence of the domination of the Cabinet is that law-making proceeds not by the give and take of compromise, but by the cracking of the majority whip. However strongly the Opposition might feel on any point, it cannot compel the Government to accept its point of view. A Conservative Government can pass a bill making strikes and lock-outs illegal in the teeth of opposition from the Labour group ; and a Labour Government can socialise industry in spite of the vigorous opposition of the Conservative block. There are no checks and balances in Great Britain to prevent the evils arising out of legislation by sheer majority vote. The only check on the growing dictatorship of the Cabinet is that of public opinion. The rigour of this absence of formal checks is, however, softened by the way in which public opinion operates in the country.

Another consequence of this most important political development may be noted which is neither a merit nor a demerit of it. The main discussion of political issues has been transferred from Parliament to the press. The Cabinet responds more quickly to hostile criticism of its policies and decisions in the press than to the speeches delivered by members on the opposite benches in the House of Commons. In other words, the control of Parliament has been replaced by that of public opinion. It has also given rise to the idea that decisions involving major issues of policy should not be arrived at without giving the nation an opportunity to express its opinion on them at a general election.

Causes of the Phenomenon.— The chief cause of this shifting of the centre and force of the state from the House of Commons to the Cabinet is the increasing elaboration of party discipline and party rigidity necessitated by the widening of franchise, brought about by successive Reform Acts. There were political parties in the country during the first half of the last century and even before it, but they had no elaborate and rigid organisation. Candidates stood on their own merit, went down their constituencies, preached their own doctrines and met their own expenses. They were not pledged to support one government or criticise another under all circumstances. There was a good deal of free aad cross voting in the House of

Commons. Since goverr ments did not have great majorities during the period, very much depended upon the debate and the government had to accept the verdict of the House of Commons. But all this is changed now. Candidates arc chosen and put up by the various political parties each of which places its own principles and programme before the electorate, and the voters give their votes not so much to the individual candidates as to the parties which they are pledged to support through thick and thin. Party discipline has become so strict that a member cannot vote against his party however much he might differ from it on a given issue; he has to vote as directed by the whip or resign from the party which usually amounts to retirement from political life or the transference of allegiance to some other party. Hence there is no free or cross voting such as was common enough before the elaboration of the party organisation. Governments rely upon their majorities for overriding Parliament. The result is that a Cabinet resting upon a single party majority has nothing to fear from the House ; the ministry is safe.

The second factor which has powerfully contributed to the Cabinet's control over the House of Commons is its power to dissolve the latter and appeal to the country whenever there is a difference between the two on an important matter. The government is always in a position to coerce the recalcitrant members of its party into the acceptance of its views or be prepared for a dissolution of the House. Cabinet dictatorship did not exist in Third and Fourth French republics where the Cabinet did not possess the power of life and death over the Chamber of Deputies or the National Assembly, (and where party discipline was not so rigid). So long as the Cabinet can wield this formidable weapon of dissolution, parliamentary control is bound to be largely unreal.

Reference may also be made to another cause of the phenomenon. The Cabinet has assumed responsibility for every detail of administration, and it makes every criticism of administration or financial policy a question of confidence in the ministry and resists it by the entire weight of its party majority. This stifles free discussion and prevents the House from exercising due control over administration. Lastly, it may be added that the work the House of Commons is called upon to do is enormous; the House is overweighted with its nominal duties, variety of work and interests. The work falls into arrears and the House has to leave many things to

the ministers.

Besides the above, many other causes have been at work which have contributed to the growth of the powers of the Cabinet. Some of them are not confined to Great Britain but are world-wide; there has been a tremendous growth of the power of the executive almost everywhere. The power of the American Presidency has increased tremendously. Similar has been the case in Switzerland. Surely, the two great world wars which had to be fought during the last fifty years have had much to do with the phenomenon. Extra power had to be concentrated in the executive in order to enable it to cope with the situation. The power acquired by the executive survived after the war period. In the second place, the extension of the idea of welfare state and of social services had a similar result. The wider the scope of state activities, the greater the power of the executive is bound to be. In the third place, the tendency to replace laissez-faire competitive economy by planned economy has meant a great expansion of state power and activities. The influence of the last two factors is clearly visible in our own country. In the last place, mention may be made of the great growth of delegated legislation. Parliament finds it difficult to go into details in its legislative measures, and is content to formulate broad principles leaving it to the executive to frame rules for their application. Reference to the necessity of delegated legislation and the dangers to civil liberties it involves has been made on pages 21–3 above.

The executive control exercised by the Cabinet on the House of Commons is unhealthy and undesirable. It puts too much power in the hands of a small number of persons and shapes into majority despotism. The House is rendered incapable of exercising that control over the government which is needed not only for the health and efficiency of administration but also for the preservation of real freedom and democracy in the country. It is not far from the truth to hold that Great Britain is living under the dictatorship of the Cabinet qualified by the fear of publicity and the pressure of public opinion.

Role of the Opposition.— In view of the fact that the Opposition in the House of Commons is an integral part of the machinery of Government in Great Britain— its designation as Her Majesty's Opposition and the payment of a salary of £ 2000 an year to its

Leader clearly testify to it— a few words about the role played by it seem to be necessary here. For the proper working of the Cabinet or Parliamentary system of government a sound Opposition is very essential; some writers go to the extent of saying that the single criterion of *free* democratic government is to be found in the status assigned to the Opposition. In what is known as People's Democracy opposition is not tolerated; the majority is taken to represent the national will; criticism of and opposition to it are considered seditious and therefore deserving of suppression. The natural result of such a theory is totalitarian rule by a single party. What has saved the domination of the cabinet in Great Britain from degenerating into dictatorial rule is the check imposed upon it by the Opposition inside Parliament, (and by public opinion outside). The stronger the Opposition, the more wholesome is the check upon Government and the greater the spur to efficient administration. It is interesting to note that the main reason why parliamentary system failed to work satisfactorily in republican France and some other countries was the absence of a strong parliamentary opposition which could function as an alternative government. The weakness of democracy in our country also arises from the absence of a strong and united opposition which could throw a powerful challenge to the Congress.

The British practice rests upon the principle that since public opinion is almost always divided on major national issues, the majority cannot be considered to be always right; it can be wrong sometimes. Therefore there must be some organ inside Parliament able to criticise the majority and point out where it is wrong. This very necessary and wholesome function is performed by the official Opposition. While the majority rules, the opposition criticises. It is one of the finest traditions of British constitutional theory and practice that while the minority recognises the right of the majority to govern, the majority on its side admits the claim of the minority to criticise, and affords it all facilities to perform its function. According to Jennings the Britishers are a free people because they can criticise freely; and if their criticism proves persuasive, compel the government to withdraw. 'To find out whether a people is free it is necessary only to ask if there is opposition, and if there is one, to ask where it is.'*

* Jennings: *The British Constitution*, page 82.

Functions of the Opposition.— If what we have tried to establish above is true, if the Opposition is really as integral a part of the machinery of government as the Government itself, it must have certain important functions to perform. Their nature does not seem to be so well understood in our country as in Great Britain. It is therefore necessary that we dilate on them a little here.

It is sometimes said that the function of the Opposition is to propose nothing and to oppose everything that the Government may propose to do ; that it should attack the Government on all possible occasions and hamper its activities to the best of its capacity with a view to discrediting it in the eyes of the electorate and finally turning it out. We do not subscribe to this view ; it seems to be a wholly wrong and harmful doctrine. If the opposition is an integral part of the machinery of government, it must have a positive role to play ; its function cannot be negative. Its true function is not to obstruct the Government but to become the mouthpiece for popular grievances and discontent. It compels the Government to formulate its policies openly and subjects them to a searching criticism. In other words, its function is to furnish the criticism which is needed to put the Government on its mettle and public opinion on the alert. The awareness that its measures are bound to be subjected to a spirited and vigorous attack (which sometimes becomes bitter and sarcastic) acts as a powerful check on the Government and compels it to pay due attention to public opinion. It is true that under the bi-party system and strong party discipline there is no chance for the Opposition to defeat the Government on the floor of the House and thereby to compel it to resign. Both the Government and the Opposition know it too well. Members of the House of Commons are fully aware of the fact that speeches, however eloquent and persuasive, do not turn votes. The result of a debate is a foregone conclusion. Nevertheless, both the Government and the Opposition take them seriously. The debates and speeches are meant for the public ; they contain an appeal to the country at large. There is generally a floating vote in the country which is not definitely committed to any political party and which can sometimes be decisive in an election. The efforts of the Opposition are directed towards capturing the floating votes. The Government is also fully aware of their importance. The struggle between the majority and minority parties is thus waged not in Parliament but in the country at large ;

a small turnover of votes in the general election can put the Government out of office and the Opposition in power. Neither the Government nor the Opposition can afford to behave in a tyrannical or indifferent way and to antagonise public opinion. The Opposition thus provides a very wholesome check on the Government ; it compels the latter to maintain a close relation with public opinion. The Government understands that the Opposition is not just a nuisance to be tolerated but very essential for its own security. The criticism levelled by the Opposition gives the Government an opportunity to refute the allegations and thus help to check any adverse current of opinion. A British Prime Minister once said that the reason why he lost the general election was that he never had the opportunity to convince the electorate of the soundness of his policy because it had never been attacked.

It is a characteristic feature of British parliamentarianism that there is a good deal of mutual cooperation between the Government and the Opposition ; parliamentary obstruction is rare. Filibuster and other obstructionist tactics are not generally looked upon with favour or sympathy. The Prime Minister and the leader of the Opposition, or the whips of the two parties, arrive at an understanding as to what topics are to be debated in the House and how much time is to be given to each. They also arrange for a debate on a motion of censure or some other public issue chosen by the opposition. There is thus enough of give and take between the two in Great Britain. How one wishes that a similar understanding and attitude were to develop between the Government and the Opposition in our own country.

One important difference between the character of Opposition in our country and in England deserves to be noted ; it pinpoints one vital function of the Opposition in parliamentary democracy. The British Opposition is *responsible* ; ours is not, at least for the time being. The Opposition in Great Britain is capable of forming alternative government ; it knows that, sooner or later, it is bound to secure a majority of seats in the House and to be called upon to form the government. It cannot afford to behave in a reckless manner or make wild and frivolous attacks on the Government. It cannot indulge in agitational technique as the opposition parties do in India. It is loyal to the Constitution and the established regime. The

Government also knows that it is there for a limited term only, and might be made to vacate office at the next general election. It cannot therefore afford to treat the Opposition with indifference or disrespect.

The Opposition, an Organised Unit.— Finally, we may note that the Opposition in the House of Commons is a well organised unit. It has its own leader whose position is recognised by the statute. He is given a salary of £ 2000/- a year, which is a charge on the Consolidated Fund, and has a room in the same corridor in which the offices of the various Secretaries of State are located. He stands by the side of the Prime Minister when Parliament is opened by the Monarch and on other important occasions, and is in constant communication with the latter on day-to-day political affairs. He is sometimes described as the alternative Prime Minister.

The Opposition has a shadow cabinet of its own and also whips who keep in close touch with government whips. The shadow cabinet consists of former ministers and sometimes a few other members of the party who show promise of leadership. The leader of the Opposition and members of the shadow cabinet sit on the Opposition front benches and face the Treasury benches opposite.

Summary.— We would be able to appreciate the vital role played by the Opposition in the British system if we bear in mind that the entire function of the House of Commons as a focal point for criticism and discussion has devolved upon it. It is not members of the majority party who subject government measures to a searching criticism but members of the Opposition. Although members occupying the Treasury benches are not debarred from ventilating populate grievances, it is really the function of the Opposition to do so. By providing a strong check on the Government and compelling it to listen to public opinion the Opposition guarantees the success of democracy in Great Britain. As was stated in the opening paragraph of this section, the status assigned to the Opposition in a country is the soundest criterion of free democracy. We may again quote Jennings: 'We (the British) are a free people because we can criticise freely. To find out whether a people is free, it is only necessary to ask if there is an opposition.' It is thus very easy to understand why the official Opposition is treated with the greatest consideration by the Government in Great Britain.

Chapter IX

POLITICAL PARTIES

Introductory.— Political parties are so inextricably mixed up with the working of the British political system that no realistic survey of it can avoid making constant reference to them. Though unknown to the law of the constitution, the entire working of the parliamentary system in the country is dependent upon them. The conduct of elections, the formation of government, the relation between the executive and the legislature are all determined by the manner in which the party system works. If the latter were to undergo some radical change; *e. g.*, if the traditional two-party character of the British party system were to be altered by the adoption of Proportional Representation which would help revive the Liberal Party and might lead to the emergence of new groups, the entire working of the political system would change. The Cabinet would lose its present dominating position and the stability of government would be seriously endangered. There are few countries, if any, in which political parties play such a pervasive and influential role as they do in Great Britain. We wholeheartedly endorse the observation of Jennings that a realistic survey of the British Constitution to-day must begin and end with parties and discuss them at length in the middle.

The Role of Parties in Great Britain.— The highly significant role that is being played by political parties in the working of the British political system is evident in many ways. In the first place, it is through the parties and their network of organisations throughout the country that the public impulse is being constantly felt, and adjustments being constantly made in response thereto. The government of the day keeps its eyes on the results of the by-elections and the sentiments of the public which find expression in other ways, and adjusts its policy and activities accordingly. In the second place, though formally the voters cast their votes for particular individuals, and not for parties, in reality they express their preference for one party or the other and its programme; the record of the individual candidates is of secondary importance. A general election in Great Britain gives the electorate the opportunity to decide whether the

existing government should remain in office or give way to the opposition. It is thus a highly democratic process in which a perfectly clear issue is placed before the voters. In the third place, the present dominating position of the Cabinet *vis-a-vis* the House of Commons is mainly due to the fact that Great Britain has developed the bi-party system and each of the two major parties is a highly organised and well-disciplined body. Lastly, the vital role of the parties is borne out by the observation made by a writer that what the British people have in their parliamentary system is a *perfected* party government. The word *perfected* is perhaps meant to show that the operation of the party system has been carried to a much greater length in Great Britain than in countries like France and Switzerland, and even the United States. The very character of the government and many of the constitutional conventions in the country are determined by the bi-party character of the British party-system. 'It is the leadership of a *party* that gives to the Prime Minister his enormous power; it is common membership of a *party* that gives unity of character and aims to a Cabinet; it is the existence of an organised supporting *party* in the House of Commons that enables the Cabinet to carry on its work, and (when the party has a majority) endows it with a complete dictatorship over the whole range of government, and this dictatorship is only limited or qualified by the fear of those who wield it lest any grave blunder may weaken the *party* in the country and bring downfall at the next election time.'* As has been pointed out above, the entire character of the British governmental system would alter, if, instead of two, there were three or more major political parties in the country necessitating coalition governments. As it is, the party returned in a majority in the House of Commons forms the government from among its own adherents, and entirely excludes members of the party or parties in the opposition. It is the constant business of the minority party to continue the struggle in the House of Commons and the country at large in the hope of converting itself into a majority and taking the reins of government in its own hands. The entire political life of the country is coloured and determined by the struggle between the party which is In and the party which is Out. Each party uses all available means to organise the electorate and win its support in the various constituencies. Platform, press,

* Ramsay Muir: *How Britain is Governed*, page 116.

processions and their like are freely used. Such constant activities as are found in Great Britain are not met with in countries like France and Switzerland. Since it is the bi-party character of the British party system which has exercised so profound an influence over the political life of the country, a few words about its nature would not be out of place here.

The Two-Party System.— From what has been said above, it is evident that the British system works at its best under the two-party system. From the time the party system took shape in the country, Great Britain never had, except for brief intervals, more than two *major* parties: Lancastrians and Yorkists in the medieval period; Cavaliers and Roundheads during the Stuart era; Whigs and Tories in the first half, and Liberals and Conservatives in the second half of the nineteenth century; and the Conservatives and Labour in the second and third quarters of the twentieth century. To be sure, there have always existed some minor parties in the country; *e. g.*, Radicals, Peelites, Liberal Unionists, Liberal Nationals, National Labour, Irish Nationalists, and the Communists, and the Commonwealth party, but not one of them has ever acquired strength enough to disturb the working of the bi-party system. There have also been brief periods when a third party became strong enough to prevent either of the two major parties from securing an absolute majority in the House of Commons; *e. g.*, in 1923 when the Conservatives had 258 seats, Liberals 158 and Labour 191. Since the Conservative party could not secure an absolute majority, it resigned; it had been repudiated by the electorate. The Labour party formed the government with the support of the Liberals. The same story was repeated in 1929 when Labour had to form a minority government for the second time with 283 seats as against 256 conservatives and 59 liberals. On both the occasions the Labour Government found itself in a weak position; it had to depend upon Liberal support. It had to quit office prematurely each time; a stable government was an impossibility in the absence of one party commanding an absolute majority in the House. The country was compelled to return to its traditional two-party system which Trevelyan described as 'the unwritten law underlying the new parliamentary order of things in Great Britain'. The minor parties which have existed from time to time have either been merged in stronger cognate parties or disappeared from the scene. The Radicals merg-

ed into the Liberal party ; the Peelites fused with the Whigs to form the Liberal party, and the Liberal Unionists joined with the Conservatives. When the Liberal party disintegrated, a part of it joined the Conservatives and another part went over to the Labour side. What remains of it to-day is a mere rump, playing a very insignificant role in the public life of the country. We thus see that in Great Britain third parties have been unable to survive ; only one has been able to gain strength enough to supplant one of the major parties ; namely, the Labour party which replaced the Liberals. To-day the two party system is even more firmly established than in the past.

The two-party system prevails in almost all the English speaking countries in the world. Besides Great Britain it is found in the United States, Canada, South Africa, Australia, and New Zealand. In France and some other countries of continental Europe the multi-party system exists ; there are usually more than half a dozen groups in the popular chamber none of which is able to form the government by itself. The result is coalition governments which are proverbially unstable. What one finds in France is a quick succession of ministries. The average life of a French ministry during the Third and Fourth Republics was less than eight months as compared to the average of more than three and half years in Great Britain. In the Soviet Union and other countries ruled by the Communists they have the one-party system. No party other than the Communist party is allowed to exist and function.

It is interesting to study the causes which have been responsible for the establishment of the two-party system in Great Britain. The phenomenon is due to many causes some of which are peculiar to the country, while others are found operative in other countries also. No one of these factors can be regarded as decisive, for it is possible to find it operative in some other country without giving rise to the two-party system. Most scholars are agreed that historical factors have played a leading part in giving rise to the two-party system in Great Britain.

'It originated because, at a very early stage, the country happened to become divided into two main bodies of opinion over religious issues which soon became inextricably bound up with politics. Thereafter, partly by sheer chance and partly because of the Anglo-Saxon temperament, other issues emerged on which all the opinions voiced fell into one or other of two main categories. Such issues included the contest between Parliament and the King ; the struggle to prevent the

spread of French Revolutionary doctrines and later against continental despotism ; the opposition to conservatism and imperialism ; the question whether to continue the existing basis of the political system or to reform the electoral system to reflect the changed social structure; free trade versus protection ; Home Rule or preservation of the Union with Ireland ; socialism or conservatism in economic and social policy ; a foreign policy of appeasement or of active defence of the established international order; the preservation of capitalism or socialistic reforms of the structure of society.'*

Historical causes may account for the establishment of the two-party system ; they, however, cannot account for its continuance. It is indeed surprising that all the issues which arose subsequently— they have been enumerated in the passage quoted above— should have fitted nicely into the two-party system. What facilitated the process was the genius of the Anglo-Saxon people for compromise or the spirit of tolerance as it may better be called. The highly homogeneous character of the British nation has also contributed towards the continuation of the two-party system. Whatever the differences between the Tories and the Whigs, or between the Conservatives and the Liberals or the Socialists, they have never been divided by great differences similar to those one finds in India and Russia. All Britishers accept the fundamentals on which their social order is based. This fact is set forth in the following words by Professor Laski : 'The principles of Gladstone always started from the same premises as those of Disraeli ; so did those of Mr. Asquith and Mr. Llyod George start from premises which, in broad substance, Lord Balfour or Lord Baldwin would have been willing to accept.' As we shall show at a later stage in this chapter, the differences between the present-day Conservatives and the Labour party show a tendency to narrow down in many a way.

The method of election by plurality of votes from single-member constituencies has greatly helped the British people to retain the two-party system. It greatly militates against the rise of a third party, unless the period of its growth happens to coincide with the time of the disintegration of one of the existing major parties. Since the issue before the electors is whether they want the existing government to continue or to give a chance to the opposition, there is not much chance for third party or independent candidates to make a successful appeal. A third party, not being a possible government, is usually

* Mathiot : *The British Political System*, page 86.

ignored. To be sure, third party candidates may succeed in securing a sizable share of the national vote; they rarely carry a large enough number of constituencies to be returned in sufficient strength. This is why the Liberal party has been unable to make a good showing in the general elections during the last few decades. Being pragmatic rather than doctrinaire, the British voter does not like to waste his vote on a third party candidate; he likes to choose between two possible governments. Before the 1950 election the Gallup poll asked: 'Would you vote Liberal if you thought the Liberals would win?' To this question 38 % replied yes; 29 % more than those who voted for them at the elections. Where this homogeneity and this pragmatic outlook are absent and people vote on the basis of religion, caste, or language as they do in our own country, election by plurality of votes from single member constituencies would not necessarily result in the development of the two party system. The French tried this system (with some modifications), but they did not succeed in replacing the multi-party by the bi-party system.

It may also be mentioned that the way in which seats are arranged in the chamber in which the House of Commons holds its sittings also militates against the growth of a third party. It is a rectangular hall bisected into two parts by a broad aisle or gangway leading from the main entrance. At one end of the aisle is the table used by the clerks and beyond it is the chair of the Speaker. On each side of the aisle there are rows of chairs. On the one side sit members of the majority party which forms the government; on the opposite side sit the members of the opposition party. As a result of this arrangement of seats members of both the parties, the party in power and the party in opposition, sit facing each other, rather than facing the Speaker. This arrangement discourages the growth of third parties. In a hall like that which houses the French National Assembly seats are arranged in a semi-circle or horse-shoe shape with the parties of the right on one extreme, the parties of the left on the other extreme, and those of the centre in between the two. It is not suggested that the British way of arranging seats in the chamber is a material factor favouring the continuity of the bi-party system; all that is implied is that it hampers the growth of a third major party. It is symbolic of the two-party system; it is designed to accommodate two and only two major parties. It may also be added that it makes it difficult for a member to shift his allegiance from

one party to the other. Crossing the floor is a much more difficult affair in Great Britain than in the French and other European chambers where the numerous groups shade into one another imperceptibly. In Great Britain the seating arrangement suggests that there is a straight fight between the party in power and the party in opposition, the former proposing and the latter criticising. There is little scope for a third major party developing.

In the end, we may point out that the British people have always rejected the proposal to adopt some form of proportional representation because they want to stick to the two-party system which can be preserved only under the single-member constituency system with election by plurality of votes. The fact that Parliament can be dissolved before the expiry of its full five-year term whenever the Cabinet thinks that it has lost or is about to lose the confidence of the House of Commons is also one of the important reasons for the continuation of the two-party system. The threat of dissolution is sufficient to discourage party splits and the formation of dissident groups. Almost all the British institutions have assumed their present form and their characteristic features because of the two-party system and help to ensure its continuity.

The British people want to retain the two party system because it has some advantages. Firstly, it is highly democratic because it gives the electorate the opportunity to choose their government. Under the multi-party system the government is chosen, not by the electorate, but by the chamber. Secondly, it makes for stability of government. The party which has been returned in a majority in the House of Commons can normally expect to remain in office for the full term. It is thus in a position to carry its programme through as expeditiously as it likes and is not compelled to look to other parties for help and support. It is interesting to note that the Labour Government was short-lived on both the occasions on which it lacked absolute majority in the House of Commons. Lastly, it rules out the necessity of election alliances and of coalitions between different groups. The ministers are not obliged to resort to manoeuvres to retain their office and can devote all their time and energy to implement their policy.

But these advantages are counterbalanced by some serious disadvantages. Critics of the bi-party system like Professor Ramsay

Muir hold that under it the national verdict at a general election is distorted. A voter may vote Labour not because he is a socialist at heart, but because he dislikes the conservative policy. Similarly, a man may cast his vote in favour of a conservative candidate not because he likes conservatism but because he dislikes socialism. The three party system with its right, left, and centre groups corresponds more closely to human nature and enables the electorate to express its mind clearly. In yet another way the bi-party system is highly defective; it favours the maintenance of status quo and presents almost insuperable obstacles in the way of new parties with new ideas and policies emerging. Though there is no bar to a new party being formed or an old one revived— there is full freedom of speech, press and association in the country— nevertheless, the two-party system and the various institutions built round it make it well nigh impossible for a new party to grow. The Liberal party has been hit the hardest by this system. This is why it favours proportional representation in one form or another. In the last place, it is alleged that under it parliamentary government is apt to degenerate into cabinet dictatorship. When a government has an absolute and solid majority to support it in the legislature, it becomes supreme in law-making, in finance and in administration. What has happened in Great Britain illustrates this point. If the House of Commons has become subservient to the Cabinet and is unable to perform efficiently its prime function of exercising control over government in the name of the people and hold it accountable, the responsibility for the phenomenon is that of the two-party system. What makes government too strong and 'lacking in that spirit of compromise which is the essence of a truly representative government' is the combination of ministerial responsibility and the two-party system.

The British people are not unmindful of these shortcomings of the two-party system. Proposals to reform the electoral system have been mooted from time to time. The system, however, continues and is likely to continue indefinitely, because it helps the system of government which has developed in the country in the course of centuries to function smoothly. It also continues because neither of the two major parties is at all anxious to abandon it; each hopes to profit by it and get exaggerated majorities in the House of Commons every now and then.

Class-Character of British Parties.— Before we pass on to a study of the principles and characteristics of the two major parties which exist at the present time, Conservative and Labour, we may add a few words about their alleged class-character. It is maintained in some quarters that the Labour party represents the class of industrial proletariat and the Conservative party is the party of the capitalists and financiers. While it is true that the former finds its main support in the trade unions and the latter in business and financial circles, it would be unfair to dub them as class parties. Their so-called class character is ruled out by the implications of the two-party system. If all the British voters could be divided into two classes, industrial proletariat and business and financial class, and if all and none but the workers voted Labour, and all and none but the capitalist and landlord voted Conservative, the two parties could be properly designated as class parties. But not one of these assumptions is true. Besides the class of industrial workers and the class of businessmen and financiers, there are the whole class of white collar workers, the group of lower and middle class civil servants, the group of middle-class men, and the group of those engaged in learned professions. These groups owe allegiance to neither the Labour nor the Conservative party, and are numerous enough to tilt a general election in favour of either party. Each party is anxious to win over the votes of these middle groups and must therefore necessarily shed its class character, if it has any. The suspicion that the Labour party looks after the interests of the industrial workers only would be fatal to its success. It must therefore make its programme as wide and inclusive as possible ; it must appeal to every section of the society. The same is the case with the Conservative party. We can therefore safely conclude that, despite appearances to the contrary, British political parties are not class parties. In this connection the remarks of Professor Laski quoted on page 197 above should be borne in mind.

In the next place, it is not true that all industrial workers vote Labour and all businessmen support the Conservative party. While it is undeniable that the Labour party is dominant in the major industrial areas of Great Britain, in the 1950 election the Labour poll was only sixty per cent in Durham and Tess-side which sent back a solid block of Labour members, and just over fifty per cent in the Yorkshire woollen district, and less than fifty-four per cent in

other industrial areas. Similarly, Labour gets about 40 to 45 per cent of votes in areas traditionally the stronghold of Conservatism. The truth is that both the parties 'are catholic in the true sense. Neither in their organisation nor in the implications of their policy have they excluded any person from supporting them on grounds of ancestry, religion, or economic status. The Conservative party is not all capitalists, nor is the Labour party made up entirely of workers.'*

Parties before 1867.— British political parties have a long history like the British Constitution. Into their origin and past development it is not relevant to our purpose to enter; we are concerned with their present organisation and function. Though Jennings holds the view that they arose out of the Reformation, the view commonly accepted dates them from 1660. The Tories to whom the present day Conservatives trace their descent supported the prerogatives of the Crown; while the Whigs, who may be regarded as the spiritual forebears of the Liberals, sought to uphold the authority and supremacy of Parliament. The division between the Tories and the Whigs was somewhat akin to the difference between the nationalists in India who fought for national freedom and those who supported the British authorities under whom they prospered, before we attained freedom. When the final victory of Parliament in 1689 made that basis of division obsolete, other issues were found and party divisions continued to exist. But the parties of those days were not well-organised. Right down to 1867 they possessed no central organisation to select and help candidates and to keep control over their members in Parliament. Candidates stood on their personal merits, canvassed for themselves, met their own expenses, and were free to align themselves on any side in the controversy on an issue in the House of Commons. There was a good deal of free and cross voting; individual members retained their liberty of action. Now all this is changed. Party organisations select and put up candidates, canvass for them, make arrangements for bringing the voters to the polling booths and otherwise help their nominees. Candidates not attached to any party have little chance of success. No independent candidate was elected to the House of Commons in the elections of 1951 and 1955, but one such candidate found his way to the House in 1959. On account of their dependence on party organisation for

* Jennings: *op. cit.*, pages 33–4.

success in elections, persons returned to Parliament have to forego their liberty of action and submit to strict party discipline. We may add a few words about the way in which this great change was wrought.

The Development of Contemporary Party System.— It is customary to trace the development of elaborate party organisation and the increasing strictness of party discipline to two factors. One was the great increase in the size of the electorate brought about by the Reform Acts of 1832 and 1867. The second was the emergence of two challenging and dominating personalities, Gladstone and Disraeli, at the moment when franchise was extended to about a million urban working class members by the Reform Act of 1867.

It is easy to see how an increase in the size of the electorate leads to a greater elaboration of party organisation and to stricter party control over the elected members. With every extension of franchise the difficulty of the task of helping newly qualified persons to get their names on the electoral roll, canvassing and bringing them to the poll, conducting the electoral campaign and meeting its cost is bound to increase. Individual candidates find it beyond their power to do all the work without external help. A central party organisation is better fitted for getting all such work done through its whole-time salaried agents in different constituencies. It provides literature and speakers to them and also finds funds needed for the purpose. Since the central party organisation foots the bill and helps the candidates, it naturally comes to have a greater say in the matter of their selection and finds itself in a position to exercise greater control over their behaviour inside the chamber. In this way the party organisation becomes increasingly elaborate and party discipline more strict. We have a very good illustration of this tendency in our own country. The Indian National Congress has well organised central and local organisations and keeps its members within strict discipline. In England the process was slower, almost insensible. Into the various stages through which it passed it is not necessary to enter.* It was greatly helped by the emergence at an opportune moment of two powerful personalities, Gladstone and Disraeli. Instead of voting for individual candidates voters found it

* Those who are interested in the topic would do well to read Ramsay Muir: *How Britain is Governed*, Chapter IV.

much easier to vote for candidates who could be counted upon to support one leader or the other through thick and thin. From that time till the present day people vote not so much for individual candidates as for the principal leader of one party or the other whom they want to be their prime minister. In our own country also millions of voters voted for candidates not because they happened to be particular individuals but because of their respect and regard for leaders like Gandhiji and Jawahar Lal Nehru. The party leader naturally becomes an important figure during election time.

Before the rise of the Labour party the struggle for power was between the Conservatives who maintained, though in a modified form, the earliery Tory tradition and the Liberals upon whom the mantle of the Whigs had fallen. From 1846 to 1918 there was genuine two-party system in the country. The Liberals were in the ascendancy for a much longer period than their rivals the Conservatives, having held the reins of office from 1846 to 1874, from 1880 to 1886, from 1892 to 1895, and again from 1906 to 1918, in all for a total of nearly 49 years out of 72. Out of the 49 years that the Liberals were in power we may deduct the last four years when Great Britain had a coalition government under a Liberal Prime Minister for the duration of World War I. When the War was over, the Coalition Government sought a fresh mandate from the electorate. Some of the Liberals were opposed to the continuation of the coalition and contested the election under the name of Independent Liberals. The Labour party, which had grown fairly big during the preceding two decades or so, also entered the fray. The Coalition Government won by a handsome margin, but the Liberal party was greatly weakened by the schism. The Independent Liberals secured only 28 seats and Labour 63. The Coalition Government was weakened by internal differences and resigned in 1922. The Conservatives entered the contest in their own name and came out successful. The war-time schism in the ranks of the Liberal party was mainly responsible for its decline in the post-war years from which it never recovered. The number of votes polled by it continued to decrease and the number of seats won by its also rapidly fell. Its adherents in the House constituted in 1951 numbered only six. The same story was repeated in 1955 and 1959.

With the emergence of the Labour Party as a *major* group

winning 142 seats in 1922, 191 in 1923, and 151 in 1924, the bi-party system collapsed. In 1923 there were three major parties in the House— Conservative, Liberal and Labour— with no party commanding an absolute majority. The country had the novel experience of the Labour party forming the government without a majority in the House of Commons. It could remain in office only so long as the Liberals were willing to support it. In other words, the collapse of the bi-party system led to a minority government. The situation did not last long ; in the next election held in 1924 the Conservative party was returned to power. It gained at the cost of the Liberal party. In the elections of 1929 the story of 1923 was repeated. No party had an absolute majority, and Labour once again found itself in office without a majority of seats in the House. The Liberals held the balance. Again, the Government turned out to be short-lived, and was replaced by a National Government including representatives of the three parties, with the Conservatives dominating. The Conservatives continued to rule under the guise of National government. The general elections held in 1945 after the termination of World War II saw the restoration of the old two-party system, the Labour party forming the Government and the Conservatives being in Opposition. The Liberal party was reduced to a negligible group. The guess may be hazarded that it would be dificult for it to regain its old position, even though it has made very good showing in the by-elections held during the preceding two years. The Labour party secured a majority of one vote only in the general elections of 1950, and lost to the Conservatives in 1951. The Conservatives have been in the saddle since 1951. The election of 1959 was the third successive election it won ; and it commanded a very comfortable majority of one hundred over all the other parties.

Our account of the British parties should therefore be confined to the two major parties of to-day, the Conservative and Labour parties. But the Liberal party cannot be omitted on account of its historic importance. Before proceeding with our account of the three parties, we may mention that all of them are based on changeable factors which are matters of opinion and not on unchangeable factors like religion, caste, language, or ancestry. An Englishman may vote for the Labour party one year ; in another elelection he may vote for the Conservatives, if he is not satisfied with the record

of the former; on another occasion he may support the Liberal or the Communist party. This would have been very difficult if the parties were formed on the basis of religion or faith. Being based on opinions and principles, neither party excludes from its membership any person on the ground of economic status, birth or religion. We start with the Conservative party which is much older than the Labour party and is in power to-day.

The Conservative Party.— The Conservatives are the successors of the old Tories and retain some of their political ideas and traditions. But whereas the old Tories were mostly nobles, landowners, and the clergymen who remained loyal to the established church, the present day Conservatives include business and farming elements and a great proportion of the professional classes; they appeal to a much wider circle. An analysis of voting shows that only 9 % of the Conservative voters belong to the wealthiest class, 31 % to the middle class, 48 % to the working class, and 12 % to the poorest class. It means that the Conservatives derive considerable support from the middle and working classes; they are by no means an exclusively upper-class party. Had they been so, the two party system would not have survived in the country.

It is more important for us to know what the Conservative party stands for than to find out the class of people to whom its political doctrines appeal. Its 1950 election manifesto asserted that a true 'property owning democracy must be based upon the distribution of private property and not upon its absorption in the State-machine.' In other words, the party stands for capitalism and free enterprise, and is opposed to economic planning and the extensive social controls it involves. It wants to preserve and conserve the capitalist structure of society and is opposcd to socialism. It opposed tooth and nail the Labour programme of socialisation of industry. But the conservative faith in Capitalism is consistent with the acceptance of the idea of social service state. The party accepted and virtually endorsed the entire social service programme of the Labour Government and even pledged to widen it in its 1951 election programme. It had also promised not to denationalise the industries nationalised by the Labour Government except the Iron and Steel industry and road haulage. Its argument against nationalisation is that it retards production. In other words, we can say that though opposed in

principle to socialisation of industry, the realities of Britain's position as a manufacturing and exporting nation led the Conservatives to accept a good deal of governmental planning and direction. It has thus veered round to a position not very far removed from that of Labour. While retaining capitalism, it is willing to subject it to State regulation. What it rejects is the idea of state capitalism, and state socialism virtually means nothing more than state capitalism.

Another institution which the Conservatives want to preserve is the British Empire. The party has always believed in a vigorous nationalism and has no love for sentimental internationalism. It has always stood for the protection of British interests overseas and the maintenance of British prestige in international affairs. While it has supported the League of Nations and the United Nations, it has never regarded collective security arrangements as a good substitute for a militarily strong Britain and alliances with like-minded powers.

Among the political institutions favoured by the Conservatives mention my be made of the Monarchy and the prerogatives of the Crown, the independence of the House of Lords, the privileged position of the Church of England, a powerful governing class and national unity. It has, of course, a soft corner for the interests of the big landlord and the industrial employer. The reverence which the Conservatives have for the monarch and members of the royal family is deep and profound. It should cause us no surprise to see that the Conservatives fiercely opposed the Liberal proposal to grant Home Rule to Ireland and the introduction of self-government in India. Mr. Churchill declared that he had not become the Prime Minister to preside over the liquidation of the British Empire when the question of giving self-government to India was posed before him during the World War II.

Though the Conservative party acted as a partisan of the established order and opposed most of the notable reforms introduced by the Liberals one after the other, it may be mentioned that on several occasions it took even a more advanced view than the Liberals, and was responsible for enacting a few reform measures. The great Reform Act of 1867 and the measure which reconstructed and democratised the system of county-government in 1888 were placed on the statute book by a Conservative Government. It should also be remembered that the party is less homogeneous than is sometimes

supposed ; all those called conservatives are not equally opposed to change. Within the party one may distinguish a right wing, a left wing and a centre, comparable to the right, left and centre groups within the Indian National Congress some time ago. The 'left-wingers' generally known as the Young Conservatives take a more liberal attitude than the right wingers popularly known as the 'die-hards' or ultra-conservatives. They sometimes even approach the position of the Labour party with the difference that they want to retain Capitalism, subjecting it to a more or less government control. The Conservatives of today are more progressive than those of the olden days and have been responsible for a good deal of advanced social legislation. They are moving in the direction of the state regulation of capitalism in the interest of society. This has considerably narrowed down the differences between it and the Labour party.

The Liberal Party.— Although the Liberals no longer constitute a major party, and count for little in the public life of Great Britain today, we may describe their political ideals here because they constituted the historic rivals of the Conservatives before the rise of the Labour party, and held office for a long period before their disintegration after World War I. In their principles and general viewpoint there were some significant differences between the Liberals and the Conservatives. Whereas the latter supported the established order and showed great unwillingness to abandon customs and ideas which had become traditional, the latter inherited the tradition of resistance to arbitrary government and became the party of attack. Liberalism 'began in the religious struggle of the Reformation when the right of individual judgment and testimony in matters of faith was asserted, and developed soon into an assault upon the notions of a State Church and arbitrary government. These have remained the fundamental propositions in the latest history of the party, its new and radical elements of the nineteenth century supporting them from character and interest.'* Since 'openness to new experience and the vindication of free growth' constitute the essence of Liberalism, its creed cannot be stated so easily as that of Conservatism. In general terms it may however be said that it attaches more importance to the individual than to the State, and holds that the goal of the latter is the production of perfect indivi-

* Finer : *Theory and Practice of Modern Government*, page 326.

duals in great number. It is thus led to put more emphasis on human than on vested rights. A Liberal is less wedded to tradition and is always more ready to change and alter the social and economic institutions to suit changing conditions of life. He therefore aims at changing the existing conditions in government and in industry.

In the economic sphere the liberal policy was to give greater opportunities to the masses by encouraging industry and commerce. It favoured freedom of trade and free competition. The Liberals concerned themselves with the needs of small scale agriculture and business, and the betterment of the lot of industrial workers. In the sphere of foreign relations they were for giving larger rights to peoples within the Empire. It was a Liberal ministry which proposed Home Rule for Ireland, so bitterly opposed by the Conservatives. The Liberals may be described as 'the party of individualism, progress and emancipation', as opposed to the Conservatives 'who looked upon themselves as the guardians of rights which had become sanctified by tradition'.

Too much stress however should not be placed upon the differences between the conservative and the liberal creed. The opposition between them has been much softened since the emergence of the Labour party. On the Irish issue Gladstone could not carry the whole party with him. About a hundred Liberals left him and joined the Conservatives to defeat the Home Rule Bill, and were thus responsible for the resignation of the ministry. The alliance between the Conservatives and the seceding Liberals became permanent, and the Conservative party has since then been officially known as the Conservative and Unionist Party. In the controversy between Capitalism and Socialism, the sympathies of the Liberals are more on the side of the former than on that of the latter. They regard Socialism as dangerous to the liberty of the individual which it is their historic mission to preserve. But while rejecting Socialism they advocate considerable reforms in Capitalism. They are also prepared to socialise some industries if it can be proved that the step would increase efficiency. Their contention is that the line between public and private enterprise is not fixed for ever; it has been shifting in the past and can be shifted again. It is a question of practicability and convenience and not of principle. This attitude brings them closer to the Conservatives than to the Socialists.

During the days of its greatness and glory the Liberal party drew strength from a wide range. It included members of the professional and commercial classes, urban middle class, of small shopkeepers and tradesmen, urban working classes and also a small proportion of agricultural labourers. It never made any appeal to clergymen. To-day its membership has dwindled ; a large number of its supporters have joined either the conservative or the labour ranks. The decline of the party is chiefly due to the fact that it has no clear-cut and straightforward programme. It tries to stand in the middle of the road between Capitalism and Socialism, believing in individualism for the rich and collectivism for the poor. Such a policy does not appeal to many. It has also suffered to a large extent from conflicts of personalities. It has had no united leadership for long. The electoral system prevalent in Great Britan has also hit it hard ; it has not been able to win seats in proportion to its voting strength in the country which has diminished considerably. It is in favour of proportional representation in one form or other.

The Labour Party.— While the Conservative and Liberal parties are as old as parliamentary government in Great Britain and inherit and continue the principles and traditions of the Tories and the Whigs respectively (and of Cavaliers and Roundheads if we go farther back into the past), the Labour Party is of recent origin and came into being as a challenge to both the older parties. Though there were Labour members in the House of Commons before 1900, they did not belong to any organised party and their number was small. It was in 1900 that the party came into existence, and has grown rapidly since then. In 1906 it had a strength of 29 members, in 1910 of 40, in 1918 of 57, in 1922 of 142, in 1923 of 191, in 1924 of 151, and in 1929 of 289 members. It suffered a serious set-back in the elections of 1931 and 1935 on account of disagreement among its leaders. It however more than retrieved its position in the general election of 1945 when it swept the polls sccuring 394 seats, and was in a position to form and run the government without the help of any other party for the first time in its career. It however lost the commanding position in the elections of 1950 and was returned with a majority of only one vote in the House. Finding it difficult to carry on the party programme, Prime Minister Clement Attlee advised dissolution. Fresh elections were held in 1951 in which the Conservative party was returned to power. Since then, the Labour party has

been biding its time and functioning as the Opposition.

There seems to be a fundamental difference between the policies and programme of the Labour Party on the one side and those of the Conservative and Liberal parties on the other. While the two latter parties seek to retain the present capitalist structure of society and wish to introduce reforms within its framework, the first envisages a new social order based on Socialism in which public ownership shall replace private ownership of means of production in key industries like mining, transportation and banking, and the motive of public good shall be substituted for that of private profit. Nationalisation of basic industries and the direct control of such other industries as lie at the basis of the productive programme of the nation, or stand in immediate need of reorganisation, or have reached such an advanced stage of monopoly that their private ownership has become socially dangerous may be regarded as constituting the long-range programme of the Labour party. In the realisation of this programme the Party achieved a considerable measure of success during the six years it was at the helm of affairs in the state from 1945 to 1951. Coal, gas, electricity, rail transportation, long distance truck haulage, and the Bank of England were nationalised. The Iron and Steel Nationalisation Bill was also passed before the dissolution of Parliament in 1950 but its implementation was held in abeyance until the new elections were over. Sugar, cement and other industries were to follow. The nationalised sector was to cover from 20 to 25 per cent of all industry. The long-term plan also included development of agriculture in order to make the nation less dependent upon the import of foodstuffs.

Besides this long-range policy which had for its objective a more equitable distribution of national wealth and the introduction of Socialism, Labour also aimed at raising the standard of living of the masses and providing them with amenities of life. The report of the liberal Lord Beveridge, published in 1942, formed the basis of the legislative programme of the Labour Government in the sphere of social welfare. If to-day in Great Britain the State is held responsible for a range of services covering subsistence for the needy, education and health services for all, housing, employment or maintenance, the care of the aged or handicapped persons, the care of children, the nutrition of mothers and children, sickness and maternity benefits, widow pensions and family allowances,

the credit for it to a large extent goes to the Labour Government. No doubt, the Conservatives also have adopted the idea of social welfare state, and have thus come closer to Labour. Their devotion to it is, however, not so deep as that of the Labour party. At any rate, the Labour Government carried out the Beveridge plan with great vigour. It is not necessary to go into the details of National Insurance, National Injuries Insurance, Family Allowances, the National Health and Education schemes which form part of social welfare programme. It is sufficient for our present purpose to note that it is an integral part of Labour programme to improve the standard of living for all the citizens of the country. It aims at protecting the wage-earning classes from the menace of unemployment, dependency in old age, sickness, and accidental injury while working.

In the sphere of foreign relations and imperial politics, the Labour party stands for the removal of the economic causes of international rivalry, reduction of armaments, the nationalisation of the manufacture of armaments in all countries, promotion of international goodwill, and the strengthening of the League of Nations (while it was in existence) and the United Nations. It advocates the pacific settlement of international disputes and is opposed to international wars which benefit the capitalists at the cost of the common people. It believed and still believes that if labour parties were to win political power in the major states, the prospects of world peace and harmonious relations between states would be greatly enhanced.

Though the Party still regards maintenance of world peace and pacific settlement of international disputes and the reduction of armaments as prime objectives, the development of international politics since 1945 has forced it to the conclusion that these goals can be best achieved through the traditional method of alliances with like-minded powers, strong national defences, and patient diplomacy. The force of circumstances has thus made it adopt an attitude somewhat similar to that of the Conservatives. The anti-imperial attitude of the Labour party was best demonstrated in the way in which it agreed to and arranged for the transfer of power from British to Indian hands in 1947. It seems to have been a part of the Divine plan that Labour should have come to power in Great Britain after

the World War II, and help India to become a self-governing nation. A Conservative Government headed by a person like Churchill would not have quitted India with the grace exhibited by the Government of Mr. Attlee.

The Labour party does not believe in the communist theory of the dictatorship of the proletariat and has always been opposed to the suppression of freedom of speech and association by repressive means. It has always upheld freedom of discussion and the right of criticism. It believes in democracy and wants a democratically chosen government to direct and control economic planning; it rejects the Soviet conception of planning in which the State is given the power to compel every citizen to do what it thinks best.

According to Professor Stout the British Labour party was the 'strongest and most mature social democratic movement in Europe' after its sweeping electoral victory in 1945. It tried to establish its leadership of European Socialism, but was only moderately successful in its efforts. The reason was that circumstances forced it to think more of political stability at home than of the progress of socialism in Europe. Moreover most of the socialist parties in countries of continental Europe suffered from divisive tendencies. The British Labour party also had internal differences. It fared rather badly in the electoral campaigns after 1950 chiefly because of internal differences and poor leadership. It seems that Hugh Gaitskell is no match for Macmillan. In the words of Professor Neumann 'the contrast between him (Harold Macmillan) and the very intelligent but deadly dull Labour leader Gaitskell was distinctly to the advantage of the former. It was therefore scarcely surprising that the British electorate gave Macmillan and his Conservatives another and much larger majority which prolonged the Conservative government's life beyond the ten years which had hitherto been the outer limit for the rule of any British party in time of peace.'*

Minor Parties.— Besides the two major parties, Labour and Conservative, and the Liberal party which was once a major party, there are many other parties in Great Britain. Notwithstanding their presence, the system is known as the two-party system because the struggle for power lies between two major parties; the rest of them are minor. The two major parties alternate in power as the

* Neumann : *European and Comparative Government*, page 182.

Government and Her Majesty's Opposition. The others count for little; they create nothing more than a small ripple on the political surface. It may surprise the reader to learn that in the general elections of 1950 not less than 1868 candidates contested the 625 seats. They stood under 31 different labels. The names of the more important eleven of the 31 groups are given below. The figures within the brackets indicate the number of candidates each party put up.

Labour (617); Conservative (621); Liberal (475); Communist (100); Independent Labour (2); Socialist Party of Great Britain (2); Commonwealth (nil); Social Credit (1); Scottish Nationalists (4); Welsh Nationalists (7); Irish Nationalists (2). Out of the 625 total seats 315 were annexed by the Labour party, 298 by the Conservatives, 9 by the Liberals, and 2 by the Irish Nationalists. There was one Independent member in the House.

In the general elections of 1955 the Conservatives secured 347, Labour 277 and the Liberals 6 seats in the House. In the present House of Commons constituted in 1959 the Conservatives number 365, Labour 258, and Liberal 6. There was also one Independent member. These figures show that today the two-party system has become more firmly established than in the past. The other parties can be easily ignored.

Party Organisation.— Though political parties have existed in Great Britain for more than three hundred years, their present organisation is comparatively recent. They do not appear to have had any organisation worth the name before the Reform Act of 1832. Tactical considerations and the quest for efficiency forced them to take some steps in the direction of organisation after the Act of 1832 which provided for the registration of voters. Local organisations of the two parties sprang up all over the country for the purpose. They were largely autonomous; no national organisation existed at that time.

The extension of franchise by the Reform Act of 1867 and the simultaneous emergence of leaders of the calibre of Gladstone and Disraeli provided fresh stimulus for strengthening the party organisations. Since local organisations needed more and more financial support for carrying on their activities, both the parties, Liberal and Conservative, were obliged to set up national organisations to coordinate their activities and give them financial and other assis-

tance. The party headquarters grew more powerful as the local branches became more and more dependent upon them. A little later, the Conservative party formed the National Union of Conservative and Unionists Associations; and the Liberals set up their National Liberal Federation which proved to be a more effective organisation than that of the Conservatives. In this way each of the two parties came to have a number of local associations all over the country, a central office to coordinate their activities and render them monetary and other help in carrying out their functions, and a National Association which organises annual conferences for the formulation of policy.

The organisation of the Labour party developed along slightly different lines. The leading part in its organisation was played by the trade unions. Local associations in the various constituencies were established after 1918. The party has a National Executive Committee of 25 members of whom 12 are elected by trade unions, 7 by labour parties in the various constituencies and regional federations, and 1 by socialist and cooperative societies. Five are chosen to represent the women's sections of the Party. It also holds its annual conferences. The annual conference exercises supreme control over all the activities of the party. It may be compared to the annual session of the Indian National Congress. The Labour party is thus loosely federal in its organisation.

The foregoing is a very incomplete picture of the organisation of British political parties; it contains no reference to important branches like the women's sections and youth organisations which each party maintains. In what follows we would make a brief mention of the two parts into which each of the major parties is divided. One of these parts functions inside Parliament and the other outside it in the country at large. The part inside Parliament consists of all the members of the party and is commonly known as the 'parliamentary party'. It elects its own leader and deputy leader and has a number of party whips. The party outside Parliament consists of the party organisations all over the country and the central office and organisation. The parliamentary wing is not subordinate to the national organisation and does not receive orders from it; it is an autononous body with its own leader and whips. It must however be borne in mind that the two parts work in close

cooperation and are interlocked by a number of common officers. Though in no way subordinate to the national organisation outside Parliament, the Parliamentary wing of every party is generally responsive to it and tries its best to carry out the general policy laid down by the annual conference and the national executive.

We can easily understand the way in which the British political parties are organised in the light of what we have in our own country. The Indian National Congress has its parliamentary parties in the Union and State legislatures. At the Union level there is the Union Parliamentary Congress Party with Pundit Jawahar Lal Nehru as its leader. At State level there is a Congress Legislative Party in each legislature with the Chief Minister of the State as its leader. Each parliamentary group consists of all the members belonging to the Congress in both the houses of legislature, and functions as a separate unit. The Congress Party outside Parliament consists of all the members of the Congress organised in their village, ward, taluka, district and State congress committees. It meets once a year at some place for its annual session. For discharging routine work and taking decisions on questions as they emerge there are the A. I. C. C. which may meet thrice or four times a year and the Working Committee which may meet whenever the President of the Congress likes. Each State has its own organisation, with its Pradesh Congress Committee, district, town and village congress committees. The Prime Minister and a few other members of the Union Cabinet are always included in the All India Congress Working Committee and also members of the A. I. C. C. Similarly, every State Cabinet is represented in the State Congress Committee and its executive committee. In other words, there is a good deal of interlocking between the parliamentary and national wings of the National Congress. But the President of the National Congress cannot function as the Leader of the Congress party in the Union Parliament, and no State Chief Minister can be the President of a State Congress Committee.

The vital thing to remember about the relationship between the parliamentary and national wings of a British political party is that, despite close cooperation between them and desire of the former to be responsive to the wishes of the latter, the parliamentary wing is *autonomous*. The resolutions adopted by the annual conference of a

party are, as a matter of routine, communicated to the leader of the parliamentary wing; the latter is not however bound by them. The relationship is stated by Mr. Morrison who was the leader of the House of Commons when Labour was in power, in the following words:

'Neither the Party Executive nor the Party Conference claims the right to instruct a Labour Government when it is in office. Nor is there anything in the Party Constitution giving the Conference or the Executive power to instruct the Parliamentary Labour Party when in opposition.'*

The independence of the parliamentary wing of a party of its Executive and Conference, and also the independence of the Cabinet of the parliamentary party are considered to be of great constitutional importance; they are accepted by the Conservative party also. This independence means that the first and foremost duty of Cabinet Ministers is to defend and promote national as distinguished from party or sectional interests.

We would end this very brief account of party organisation with the statement that it is a very costly affair to run a political party. The maintenance of the central party organisation alone costs about £ 50,000/- a year. The holding of the party annual conference also involves a good deal of expenditure. Besides the amounts the various party candidates have to spend on their election campaigns, the Central Office also has to spend something like £ 25,000/-. Little wonder that third parties find it difficult to compete with the major parties which have vast funds at their disposal. It is not necessary to discuss the ways and means by which the various political parties meet their heavy expenses.

The Party Leader.— The leader occupies such a pivotal position in the organisation of every political party that no account of the latter, however brief, can afford to ignore him. Originally, it was only the parliamentary wing of each political party in either House of Parliament that had a leader; there was no such office as that of the leader of the party in the country as a whole. But as party organisation developed throughout the country, the leader of the Conservative parliamentary group in the House of Lords or in the House of Commons came to be recognised as the leader of the Conservative party throughout the country. The same was the case with the

* Morrison: *Government and Parliament*, page 140.

Liberal party throughout the nineteenth century. At the present time however the leader of the parliamentary wing of each party in the House of Commons becomes the leader of the party throughout the country. This change has taken place because of the decline of the House of Lords in influence and power. The importance of the office of the party leader lies in the fact that whenever his party triumphs at the polls he becomes the Prime Minister of Great Britain. In other words, the leaders of the two major parties in the country are prospective Prime Ministers. It is therefore necessary to know the procedure by which an individual reaches the pivotal position of a party leader.

Different parties have adopted different methods of selecting their leaders. In the past on many an occasion a person virtually appointed himself as the leader of his party by making himself indispensable to it. Men like Gladstone and Disraeli became leaders of their respective parties in this way. At the present time, however, both the Conservative and Labour party leaders are technically chosen by members of the party in both the Houses of Parliament. In reality these gatherings usually ratify an obvious choice. This is particularly true of the Conservatives who act on the view that the party leader should retain his office until he chooses to retire. They also accept as their leader the person who is chosen by the Monarch as the Prime Minister when their party is in a majority and has no recognised leader. When the King appointed Mr. Bonar Law as his Prime Minister in 1922 in succession to Sir Austin Chamberlain who had resigned because of differences with the party on the question of remaining in the coalition, the Conservatives accepted him as their leader. When the King appointed Mr. Stanley Baldwin as the Prime Minister in 1923 after the retirement of Mr. Bonar Law, the former automatically became the leader of the Conservative party. When Baldwin retired in 1937 and the King appointed Mr. Neville Chamberlain as his successor in office on the advice of the retiring Prime Minister, the latter became the leader of the Conservatives. At a later date Mr. Churchill, Mr. Eden, and Mr. Harold Macmillan became leaders of the party one after the other because of appointment as Prime Minister. In each case the Monarch acted on the advice of the retiring Prime Minister. It thus seems that the rank and file of the Conservative party had little to do with the choice of their leaders; they simply accepted the person chosen by the Monarch.

The Labour party, on the other hand, insists upon the right of electing its leader each year. He is chosen by the parliamentary group. The practice is to re-elect the outgoing leader if he does not want to retire. Mr. Clynes, Mr. Macdonald, Mr. Henderson, Mr. Lansbury, Mr. Attlee and Mr. Gaitskell were elected leaders one after the other by the Labour parliamentary party, some of them after a contest. They thus became prospective Prime Ministers. Of course, Mr. Clynes, Mr. Henderson and Mr. Lansbury never got the opportunity ; they were leaders when the Labour party was in the Opposition.

The Liberals also elect their leader in the same way. Because of its having been reduced to the status of a minor party there is no question of its leader reaching Prime Ministership in the near future.

The leader of the Conservative party enjoys greater freedom of action than the Leader of the Labour or of the Liberal party. The meetings of the Parliamentary Conservative party are not of great importance ; the leader generally has his way, if he can defend his policy effectively at the annual party conference. The top leaders do not usually take an active part in its deliberations, and the determination of policy is largely left to the leader. In the Labour party the situation is otherwise ; the top leaders take an active part in the proceedings of the conference and no statement of policy can become effective until it is approved by the annual conference. The leader of the party seems to have little discretion ; he has to carry the National Executive Committee and the annual conference with him. Nevertheless, the position of the leader is very strong. He appoints the whips of the party and is responsible for giving the proper lead to the party. Success in election to a large extent depends upon the personality of the party leader. It is believed in some quarters that it was the astuteness and wise statesmanship of Mr. Harold Macmillan which was responsible for the thumping victory of the Conservative party in the last general election.

In the end we may point out that till 1942 the leader of the majority party was always the leader of the House of Commons. In the recent past the pressure of work on the Prime Minister has led to the practice of his delegating the leadership of the House to some other minister. Mr. Morrison was the leader of the House of Commons during the Prime Ministership of Mr. Attlee.

Party Discipline.— Perhaps the most important function of the

parliamentary wing of the party which has been able to win an absolute majority of seats in the House of Commons is to enable the Cabinet to remain in power by giving it adequate support in the House. To fulfill this function it has to impose a fairly strict discipline on its members. This is why British political parties have been able to develop a tight organisation and discipline, and a high degree of centralisation. Since it has become well-nigh imporsible for a person to contest election to the House of Commons successfully without the backing and support of a political party, party organisation has come to play a highly important role in the selection of candidates. If a candidate is nominated and supported in his election by a party, it goes without saying that he is expected to accept the party whip and follow its general line of policy. A person who defies the party whip and does not support the party greatly risks his future political career. Therefore party discipline is very great within Parliament. Members willingly submit to it because they wish to retain party support.

Chapter X

THE JUDICATURE

Introductory.— Having completed our survey of the executive and legislative branches of the British Government and reviewed the working of the British party system which has powerfully determined its actual working, we may turn to a study of its third great branch, the Judiciary which has played a vital role in protecting the rights and liberties of the individual citizens.

The maintenance of democracy in a country requires not only government by discussion and consent; it also demands a just and efficient working of law courts. They not only declare to the citizens the laws according to which they are governed and help them in getting wrongs redressed, but what is more important, they make it clear to them that they are subject to the rule of law and not to the whims of an arbitrary government. They discharge another important function also; they bring under law the use of force without which no government has existed and can exist. A sound legal system and a just interpretation and application of the laws of the land are thus indispensable conditions of democracy. We must therefore examine how far this condition is realised in Great Britain. It is the business of this chapter to examine the British judicial system which Stout describes as 'one of the most successful endeavours of the English nation'.

Kinds of Law.— The British system of Law is one of the foremost systems in operation in the world at the present time— the Roman and the Mohammedan being two others. Like her political system it is the product of a long process of evolution, and is mostly of indigenous growth. It has not been influenced to any considerable extent by foreign legal systems. Another important feature of the system is that it does not possess the coherence, orderliness and formal consistency so highly characteristic of the Roman system. This deficiency partly explains why it has not been adopted by nations like the Chinese, the Japanese and the Turks who have extensively copied from the French and other systems based upon the Roman system. Nevertheless, many foreign observers have given it high praise; and the rules of procedure developed by the English courts

have been adopted in many a land. Its third feature is that it is not contained in any written code as the Roman law is. The question whether a particular rule is law or not is determined, whenever possible, by considering statute law, common law and the opinions of eminent jurists. If neither of these sources helps in arriving at a solution, a judge may consult previous cases of a similar nature. From this it follows that the content of British law is drawn from several different sources. This is true particularly of law in force in England; the law administered by the courts in Scotland differs from English law both in principles and procedure. Three main kinds of laws are in operation in England: common law, statute law, and equity. The story of the rise and expansion of the *common law* is very interesting but cannot be told here; we shall describe in a few words its nature only. During the Norman and Plantagenet periods the people of England expected the King's Judges to administer justice in accordance with traditions which varied from one part of the country to the other. It was a part of the judges' task to build out of these traditions a system of rule which would be common to the whole country. These rules developed into what is to-day known as the Common Law. It is thus nothing but the crystallisation of usages or customs as interpreted by the judges. It was never ordained by the monarch, or considered, debated and approved by Parliament; but grew up mainly in an unwritten form, and has not been codified even till this day. There is no single code or text in which it is set forth in a comprehensive and authoritative manner. It is found in the recorded decisions of the judges delivered during the course of preceding centuries. Of course, there have been commentators who have tried to arrange and elucidate its contents from time to time, but they were merely its expounders and not creators. If anybody can be said to have created it, it is the judges. Common law is judge-made law in so far as it is the product of their recorded decisions. Though not contained in any parliamentary statute, it has however the same force and validity as statute law. Britishers took their common law wherever they went, to America, to Australia and other dominions, and guarded it as zealously as their flag.

The second main kind of law administered by the courts in England is *statute law*. In its origins it is as old as the common law, but whereas the latter *grew*, it came into being by enactment. In the

beginning it was enacted by the ruling monarchs, first in their Great Councils and later on in parliaments. As Parliament grew in power, the role of the king in law-making diminished, until it became confined merely to the giving of assent. The law-making authority, namely, the Queen-in-parliament, makes law covering matters which the common law does not cover; it can also change and alter any rule of the common law, enlarge or vary it, and even try to codify it. Where common law conflicts with a statute law, the latter prevails. Though statute law is growing in volume and cutting the common law more and more deeply, the greater part of the law administered and enforced by British courts is the common law. This is because most of the rights individuals enjoy in England are based on common-law principles. Most of the statutes presuppose the existence of common law, and would have no meaning if the latter did not exist.

Equity is the third great branch of English law. What it is and how it is related to the other kinds of laws shall become clear if we explain how it came into existence. In the good old days when the king was literally the fountain of justice, people who felt that they did not receive justice at the hands of his judges, petitioned to the king 'for the love of God and in the way of charity' to redress their wrongs. Finding it difficult to decide all the petitions submitted to him, he appointed his chancellor to dispose them of. As the work increased, some assistants were appointed to help the chancellor, and in due course of time a regular court known as the Court of Chancery came into existence. The principles and rules according to which it decided the cases referred to it became the foundation of the law of equity. Just as common law grew out of the decisions of the king's judges, in a similar way the judges who dispensed justice in the Court of Chancery built up the law of equity by means of precedents, traditions and maxims. Equity is thus case-law and may be regarded as a species of common law. It was intended to remedy the defects of common law and correct abuses arising out of fraudulent transactions of persons resorting to it for their own purposes. It has become highly intricate now. It has nothing to do with crimes, and is confined to certain types of civil controversies. It may be added that though equity has a procedure largely its own, it is no longer administered by separate courts. To-day there is no distinction of courts corresponding to the distinction between common law, statute

law and equity.

Reference may be made to the distinction between civil and criminal law. There are civil courts to administer civil law and criminal courts to administer criminal law. In either case a further distinction must be drawn between lower and higher courts dealing respectively with matters of less and greater importance. There is no distinction in Great Britain between ordinary law and administrative law such as prevails in France and some other continental countries. All citizens, high and low, private and government officials, are tried by the same courts and according to the same laws. This is one of the implications of the 'rule of law' of which the Britishers are very proud.

Courts of Law.— The organisation of law courts is not the same throughout the whole of Great Britain. There is one scheme of law courts for England and Wales, a different one for Scotland, and still another one for Northern Ireland. In what follows an attempt will be made to describe the organisation as it exists in England and Wales.

The courts may be divided into two categories: (*i*) the central or superior courts for the most part located in London, and (*ii*) local or inferior courts scattered throughout the country. They may be further subdivided into civil and criminal. Civil courts deal with *private law*, in other words, with disputes between one private citizen and another. The purpose of a civil suit is to obtain redress for a tort or wrong alleged to have been done to the plaintiff by another individual called the defendant; *e. g.*, for slander, trespass, breach of contract, infringement of patents. A criminal court deals with breaches of *public law*. In a criminal case the proceedings are always carried on behalf of the Crown; in other words, the Crown is always one of the parties to the dispute. Murder, theft, arson, dacoity, forgery, etc. are phenomena coming under the category of crimes dealt with by criminal courts. Their function is to punish crime and not to redress wrongs.

Coming to the judicial machinery, it should be noted that prior to 1873 it was highly defective and chaotic. There were numerous tribunals, sometimes with over-lapping jurisdictions, and each having its own peculiar forms of practice and procedure. Even a trained lawyer found it no easy task to tread his way through the maze. The

reforms introduced between 1873 and 1894 have resulted in a complete overhauling of the machinery; the higher courts have been brought into the unity of a system and the procedure simplified a good deal.

Taking up the criminal courts first, it may be pointed out that they form a hierarchy with the courts of the Justices of the Peace at the bottom and the Court of Criminal Appeal and the House of Lords (sitting as a court of law) at the top. In between the two are the courts of stipendary magistrates, the courts of Assizes and the courts of Quarter Sessions. A few words about each category are subjoined.

The courts of Justices of the Peace and of stipendary magistrates in larger towns are the lowest courts for trying criminal cases. Justices of the Peace are appointed by the Lord Chancellor and serve in an honorary capacity. They can be removed from office only when proved unfit for carrying on their duties. There are about twenty thousand of such officers but not all of them perform judicial duties. Those who do not take the oath required for qualifying themselves for judicial service number about half of the total strength. The institution dates from the early fourteenth century and has played a noble part in the development of local administration and justice. A Justice of the Peace can try only minor cases; *e. g.*, riding a bicycle without light at night, and cannot impose more than 14 days' imprisonment or a fine exceeding 14 shillings. In large cities this work is done by stipendary magistrates.

The next higher court is the Court of Summary Jurisdiction. It tries more serious cases; *e. g.*, of assault and theft. Cases are tried without jury and summarily; and if an accused is convicted, he is sentenced at once. The sentence cannot exceed six months' imprisonment and a fine of 50 shillings.

Still graver offences involving 'indictment' are tried either by a Court of Quarter Sessions or by a Court of Assizes. Quarter Sessions are competent to try all but the gravest offences— murder, treason, forgery, etc.— whether with or without jury. This court is composed of all the justices of the peace in a county who have taken the oath and are therefore eligible for judicial duty, and meets quarterly. It is not necessary for all the justices to participate in a session of this court; only two are sufficient to constitute the

quorum. Important boroughs have their own Courts of Quarter Sessions. The procedure is the same as that of the High Court. It has jurisdiction in civil matters also, and entertains appeals from the Courts of Summary Jurisdiction.

The Assizes are circuit courts held by the judges who go round the country on a circuit tour, visiting all the county and assize towns, and hearing and deciding civil and criminal cases. For this purpose the whole country is divided into eight circuits or districts. The Assize Courts try serious offences, and are held thrice a year in each county and four times in certain cities. The accused is entitled to have his case heard by a jury.

Until 1907 there was, strictly speaking, no appeal in criminal cases, though in some cases an appeal lay to the House of Lords. In the aforesaid year, however, a Court of Criminal Appeal consisting of not less than three judges of the High Court was established. A convicted person may now appeal to this court on a point of law, or of fact, or of mixed law and fact. There can be no appeal beyond the Court of Criminal Appeal except in rare cases to the House of Lords. The functions of the House of Lords as the highest court of appeal will be described at a later stage.

Turning to the civil courts we find a similar organisation. At the bottom are the County Courts brought into existence by the Act of 1846. For the purposes of civil justice the whole of England and Wales is divided into nearly 500 districts or counties whose boundaries do not in any way coincide with those of the historic or administrative counties. Each one of these counties has a county court competent to try cases involving claims of less than £ 100. These courts are very popular; justice in them is cheaply, promptly and efficiently administered. A statute passed in 1905 has enlarged their jurisdiction. The county court is not a fixed court; it is somewhat like a circuit court. The 500 counties are arranged into 55 circuits to each of which the Lord Chancellor assigns one judge. This judge holds office in each of the districts of his circuit periodically. Roughly speaking one circuit includes about ten counties. Not all the cases registered in a county court are heard by the judge; because many of them are disposed of by an official known as the Registrar of the court, by arranging compromises between the parties. Appeals from the judgments of county courts lie to the High Court

and to the House of Lords.

Civil suits involving sums above £ 100/- are taken to an appropriate division of the High Court— to the Chancery division, the King's Bench division, or to the Probate, Admiralty and Divorce division. When one of the parties is not satisfied with the decision, it may make an application to the Court of Appeal to order a new trial. Beyond the Court of Appeal an appeal lies on a question of law to the House of Lords. The Court of Appeal consists of eight Lord Justices of Appeal.

Mention may also be made of another law court called the Coroner's Court. Its function is not to administer law but to discover facts. The coroner who is usually a doctor or a lawyer and is appointed by the County or Borough Council, holds an inquest when death has occurred without an obvious cause. Rules of procedure are lax and there has been a growing criticism of the way in which the coroner performs his functions.

The Supreme Court of Judicature.— The Supreme Court is the centre of the whole judicial system in England. It was established in 1873, and enjoys both civil and criminal jurisdiction. It has two parts, (*i*) The High Court of Justice, and (*ii*) the Court of Appeal. The High Court contains three divisions: (*a*) the King's Bench which has as its presiding officer the Lord Chief Justice, and contains 19 puisne judges; (*b*) the Chancery Division which is presided over by the Lord Chancellor and contains six puisne judges; and (*iii*) Probate, Divorce and Admiralty Division with a president and four puisne judges. Criminal matters go to the King's Bench, and civil actions to the King's Bench or Chancery. Cases requiring the application of the rules of equity go to the Chancery. The Probate, Divorce and Admiralty Division handles a miscellany of problems. Judges of the King's Bench make regular tours of the country holding Assizes at certain towns where they hear appeals in criminal cases and settle such civil disputes as have not been taken to London.

Appeals against the decisions of the High Court go to the Court of Appeal. The Lord Chancellor, the Lord Chief Justice, and the President of the Probate, Divorce and Admiralty Division are members of this Court though they do not generally attend it. The work is performed by the Master of the Rolls and five Lord Justices of Appeal who are either ex-judges of the High Court or barristers

of at least fifteen years' standing. Three or more members may hear an appeal. On the criminal side appeals are heard by the Court of Criminal Appeal. It is presided over by the Lord Chief Justice and a varying number of the King's Bench. An appeal can lie to it only on a point of law.

The highest court of appeal is the House of Lords, which for this purpose is not the whole House, but the Lord Chancellor, the Lords of Appeal or Law Lords as they are commonly known, and such other peers as have previously held any high judicial office. It hears appeals from the Court of Appeal and the Court of Criminal Appeal, if the Attorney General certifies that a point of law of public importance is involved. Its proceedings are quasi-judicial, the forms of procedure are mainly those of a legislature, and the proceedings are published as a part of the chamber's proceedings.

Attention should also be called to another very important and high tribunal, the Judicial Committee of the Privy Council. It was the ultimate court of appeal for cases coming from India, the colonies and the Dominions. It also entertains appeals from ecclesiastical courts in England. In its personnel it is not much different from the House of Lords sitting as an ultimate court of appeal for the country. It consists of the Lord Chancellor, former Lord Chancellors, law lords, Lord President of the Privy Council, and a number of judges appointed from the higher courts in India (before 1947) and the Dominions. Disputes between Dominions may also be referred to it. It is thus the highest court for the British Empire. But under the provisions of the Statute of Westminster a Dominion may shut out appeals from its courts to the Judicial Committee. It may also be noted that, though a judicial body, it does not give its decisions in the form of judgments; they are delivered in the form of advice to the Crown which is always accepted and given effect to in the form of an 'Order-in-Council'.

Relation of the Judiciary to Other Organs.— We shall conclude our survey of the judiciary in England with a discussion of its relation to the executive and the legislature.

There was a time when the judicial organ was subordinate to the executive. The king was literally the fountain of justice; the judges who administered justice to the citizens were in fact and theory the king's judges; they were appointed by him and were

responsible to him. During the Stuart period the judges had become practically the handmaids of the executive. But to-day the position is entirely different; the judiciary is virtually independent of the executive. Her Majesty's judges are appointed by the Queen on the recommendation of the Government, which in practice means the recommendation of the Lord Chancellor who is the Head of the Judiciary in the state. This makes their appointment virtually independent of the executive. The Act of Settlement gave them permanency of tenure; they hold office during good behaviour and can be removed from office by the Crown on a petition from both the houses of Parliament. They enjoy complete immunity in the performance of their duties; no action lies against a judge for anything said or done in his judicial capacity. Their salaries are paid out of the Consolidated Fund and are not subject to the annual vote of Parliament. Another noteworthy feature of the British judiciary is that the judges are not civil servants by training or outlook or status; they are recruited from the bar. This circumstance has been of the greatest importance in the development of the British legal system.

The relation existing between the judiciary and the legislature calls for a more detailed examination. The first point to be noted is the almost complete separation between the two. It is no doubt true that the House of Lords functions as the supreme and final court of appeal for Great Britain, but it should be remembered that the exercise of this judicial function is entirely distinct from its legislative work. The House of Lords sitting as the final court of appeal is practically a distinct and different body from the House of Lords as a legislative chamber. For all practical purposes therefore there is complete separation between the judiciary and the legislature in Great Britain. The Legislature however continues to exercise its sovereign authority over the judiciary in two ways. It can remove a judge from office for misdemeanour; and it can over-ride the decisions of a law-court by amending the law. In an important case Parliament made the repetition of a particular judgment impossible by passing the Trade Disputes Bill of 1906. Another vital point has to be noted. The British courts do not possess any power of judicial review as is possessed by the courts in the United States of America. The American courts interpret the law and also determine whether the law is law; *i. e.*, whether the legislature which enacted it was within

its rights in passing it. If a court finds that the legislature has exceeded its authority in placing a particular law upon the statute book, it can declare the latter unconstitutional. The American courts thus act as the guardian of the Constitution. The British courts cannot perform such a function ; they can only interpret the law but do not interpret and guard the Constitution. They have no authority to entertain the question whether Parliament had the competency to enact a particular law. This difference is due to the fact that the U. S. A. has a federal government in which the written constitution is supreme. There is no written and supreme constitution in Great Britain, which it is the duty of the courts to interpret and uphold.

The High Quality of British Justice.— The British judicial system enjoys an enviable reputation, both at home and abroad, for its excellence and for the impartiality, promptness and independence with which justice is administered. Its excellence is proved by the fact that its methods and procedure have been adopted to a large extent by other nations. They have been almost as much influential in the world as British constitutional practices.

Several factors have contributed towards its excellence and efficiency. One of them is concerned with the broad principles on which the administration of justice rests. Trials are always held in open courts to which public has free access ; parties to a suit have the right to be represented by counsel ; the burden of proof lies on the accuser ; guilt or innocence is determined in accordance with a recognised body of rules and maxims ; in all serious criminal cases the accused is tried by jury ; the judges pronounce their judgment in open court and give reasons for it ; and appeals lie to higher courts on points of law. The fact that the rules of procedure adopted by the British courts are framed by a committee of experts consisting of the Lord Chancellor, seven other important judges and four practising lawyers, and not by the legislature as in United States of America, also contributes to the same result. The rules of procedure are designed to make justice expeditious and sure. Appeals on questions of practice and procedure are uncommon, not more than one in two hundred. The integrity and independence of the judges, the high standards set by the legal profession, the fairness with which cases are heard and decided, and the fact that witnesses are not manhandled, are other factors which impart dignity, stability and

excellence to the British system and make it one of the best in the world.

Before concluding this brief survey of the British Judiciary mention may be made of the fact that the British courts have no power of Judicial Review. They have no power to sit in judgment over the Acts passed by Parliament and determine their constitutionality. Their function consists in interpreting the law made by Parliament and applying it. It is a part of their duty to see that the executive does not exceed the powers given to it by law. If on the application of an aggrieved party a court discovers that the government exceeded the power conferred on it by statute, it will declare the act of the government *ultra vires* and nullify the order under which it was done. In other words, their chief function is to protect the private citizen against arbitrary acts of government and maintain the rule of law. The issue of the various writs is one of the main instruments used by the courts for this purpose. The most important of them is the writ of the *Habeas Corpus* ; it is the most effective remedy to protect individuals from unlawful imprisonment and detention. If a person has been detained or imprisoned without trial and conviction by a duly constituted court, he or somebody on his behalf can move a court for the writ of Habeas Corpus. The judge would issue an order to the Government to produce the detained person before it. If the Government is not able to satisfy the court about the grounds of detention, the court would order his release. *Mandamus*, *Prohibition* and *Certiorari* are other writs.

Chapter XI

LOCAL GOVERNMENT AND ADMINISTRATION

Introductory.— Local government is not something separate and apart from the political structure of a well-ordered state, but is an integral part of it. It is indeed sometimes ranked as one of the *organs* of government. Whether we accept this view or not, there can be no gainsaying the fact that local bodies exist in every civilized state and contribute a lot towards developing the spirit of liberty among the people, and to the successful working of free and democratic institutions. As Henry Sidgwick points out, whatever educative value is attributed to representative institutions largely depends upon the development of local institutions. Local government is usually regarded as a school of democracy. In England it has been so in a special measure ; many a great man began his political career in a county council. Joseph and Neville Chamberlain were Lord Mayors of Birmingham before they entered national politics, and Herbert Morison, a prominent Labour leader first came into prominence as the president of the London County Council. It is therefore necessary to supplement the foregoing survey of the organs of British Government with an account of local self-government and administration in the country.

Its History.— English local government is at once both older and younger than the central government. Long before a strong centralised rule was established in England by William the Conqueror, Englishmen were accustomed to manage their local affairs in their parishes, hundreds, and shires. Parishes antedate the Norman conquest, and counties and boroughs existed before Parliament came into existence. During the Saxon and Norman periods England was a land of local institutions ; the people were absorbed in their own affairs and did not feel much interested in what was happening beyond their borders. But though older than the national government by hundreds of years, local government is also much younger than it. Its present organisation is the result of a series of reform Acts passed during the last hundred years or so. Between themselves the Acts of 1835, 1888, 1894, 1929, and 1933 completely reconstructed the system as it existed in the pre-reform days. The Municipal

Corporations Act of 1835 laid down the general scheme of local government for the boroughs which they retain till to-day. The Local Government Act of 1888 did for the counties what the Act of 1835 had accomplished for the boroughs. It reorganised the administration of counties. The District and Parish Councils Act of 1894 gave to the parishes their present system of administration. It created and unified rural and urban districts in place of the numerous kinds of special districts such as burial, sanitary, and local improvement districts which were in existence before. The Act of 1929 abolished or combined a large number of the districts created by the Act of 1894 and made new arrangements for the grant of subsidies to local bodies for the performance of social services out of national funds. It resulted in the increase of central control over local administration. Finally, the Local Government Act of 1935 consolidated into a single statute the powers and functions of the different local authorities.

As a result of these five Acts which constitute landmarks in the reform of local administration in England, there are now five principal areas of local self-government in the country. They are the *county*, the *borough*, the *urban district*, the *rural district*, and the *parish*. The whole country is divided into administrative counties (corresponding to the districts into which an Indian State is divided). Within a county more densely populated areas are made into urban districts and less thickly populated ones into rural districts. These districts are further subdivided into urban and rural parishes for the handling of affairs of the neighbourhood. An area within a county which has received a municipal charter in known as a borough. London has a special government of its own. In what follows we shall describe the machinery of local self-government in each of these several areas.

The County.— The county is the largest and most important area of local self-government and may therefore be taken up first. As such it is known as the *administrative* county and is to be distinguished from the *historic* county. There are 62 administrative counties and 52 historic counties in England and Wales, 33 in Scotland, and 6 in Northern Ireland. The latter still serve as areas of judicial administration with their own justices of the peace and also form constituencies for the election of members to the House of Commons ; they have no relation to local administration at present, and therefore have no county

councils or any other local body to administer their affairs. Each of them has a Lord Lieutenant who is an honorary officer, and a Sheriff whose duties are more or less perfunctory. The historical counties have no importance from the point of view of local government and administration.

The Act of 1888 drew the boundaries of the present 62 administrative counties. In doing so the authorities largely followed the ancient counties except where they had to be divided to make convenient areas for local administration. The result is that though the two types of counties differ and have to be distinguished, their areas coincide in most, though not in all, cases. The county of London, for example, does not correspond to any historic county; it cuts into four ancient counties. It may be pointed out that the counties are not equal in area or population.

In every administrative county supreme power is vested in an elected body and not in a singh person. Every county has a county council as its governing organ whose strength varies according to the population of the county. It is composed of councillors and aldermen, and a chairman elected by them. The chairman who is usually known as Mayor performs ceremonial functions. The difference between councillors and aldermen lies in the way they are elected to the council and their respective tenures, and not in their powers and functions. The aldermen are not directly elected by the voters like the councillors, but are chosen by the councillors from among themselves or outsiders, equal to one-third of their number; *e. g.*, if there are thirty councillors, they would elect 10 aldermen. An alderman is chosen for a six-year period, while the term of office of a councillor is only three years. For the election of councillors the whole county is divided into a number of electoral districts each returning one member. Vacancies caused by the election of councillors as aldermen are filled in the same way in which councillors are elected. On account of his longer term an alderman has a little more prestige than a councillor, but not greater authority or wider functions. Half of the total number of aldermen retire every three years; *i. e.*, at the time of each council election. The institution of aldermen is useful in at least a twofold way; it enables some members to acquire greater experience of council work, and permits the county to secure the services of persons possessing special knowledge but unwilling to

stand the strain of an election campaign. The councillors and the aldermen sitting together elect a chairman generally from among themselves, but not necessarily so. A council may pay to its chairman a salary, and to its members travelling expenses when they do council work.

Elections to the council are held once every three years at the beginning of March. Every voter is qualified for election as a councillor; ministers and even peers can become members provided they are qualified to vote. Strange as it may seem, till recently municipal franchise in Great Britain was linked up with ownership or occupancy of premises or payment of certain amount of taxes. No one was entitled to get his or her name put on the voters' list unless he or she owned or occupied some premises or was the husband or wife of a person owning or occupying a premise, or paid a certain amount of taxes. There was thus no *universal* franchise for municipal elections in England as there was for parliamentary elections. Municipal franchise was narrower than national franchise; a person could be a voter for parliamentary elections but not for municipal elections. But now by an Act of Parliament local or municipal franchise has been assimilated to the parliamentary franchise. In other words, every British subject, male or female, will have a vote in local elections, provided he or she is not statutorily disqualified on grounds of lunacy, insolvency, etc., and his or her name has been put on the register of voters in the constituency after residence there for the qualifying period of two months. The old qualification based on occupation of business premises, as distinct from residence, also remains. 'A man with an office in Holborn and a home in Surbiton will be registered as a local government voter in both places.'*

The council meets regularly at least four times a year. It enjoys wide and varied powers, and performs useful and important functions. It supervises and controls the work of the lesser local authorities functioning within the territorial limits of the county and also performs a number of functions directly. Among the latter may be included the preparation of the budget, the levying of certain taxes, the making and upkeep of the main roads and bridges in the county, the maintenance of asylums, reformatories, and industrial schools.

* Stewart: *The British Approach to Politics*, page 219.

It is also the chief educational authority for the county, co-ordinating and supplementing the library service of the parishes, and responsible for organising elementary education in the rural districts. It makes a general survey of the county from time to time and recommends alterations in the boundaries of local authorities. While the districts and the boroughs within it do most of the work under the Housing Act, the county council has to see that the work is properly done, and may take over the work itself. It also gives attention to agricultural development and the growth of industries. It organises advanced education in agriculture and encourages the children of labourers to take advantage of it. In short, one may say that it is the aim of the county council to make life in the countryside more varied and attractive, and to raise the standard of living of the agricultural worker. In addition to its social services it has some duties in connection with the county policing also. It is important to note that in England there is no national police force comparable to the police force maintained by every State in our country ; England has only a series of county and borough police forces.

It may be added that the powers and responsibilities of not only the county councils but of all local authorities have considerably increased ever since England became a welfare state. The management of most of the social services has been entrusted to them. The Education Act of 1944 and the Town and County Planning Acts of 1944 and 1947 have added greatly to their responsibilities. The Education Act makes the county and borough councils responsible for all primary, secondary and related education, and for the establishment of kindergarten schools and special schools for the handicapped children. The Town and Country Planning Acts charge county and borough councils with the duty of drafting plans for their respective areas. All such plans have to be approved by the Minister of Town and Country Planning. Besides education and town planning, public health, housing, public works and public services are also local services.

It would thus appear that most of the work entrusted to county and borough councils is administrative in nature. The only work which can be regarded as legislative is the power of making bye-laws for regulating their activities. These bye-laws must conform to the basic laws passed by Parliament and be within their frame-work.

The council does not do all this work itself. It is concerned with questions of general policy ; the routine work of administration is done by the permanent staff. It includes the county clerk, the treasurer, the surveyor, the health officer and a number of other functionaries. All of them are appointed on merit and are not removed on political grounds. The reason for the great efficiency which characterises local administration in England is to a large extent due to the fact that the permanent staff is chosen on the basis of competence and is not required to play politics in order to maintain itself in office. It must also be remembered that the council makes good use of committees. Statute requires every council to have at least nine committees—, on finance, education, poor relief, public health, housing, agriculture, and maternity and child welfare. They are chosen by the council as a whole, and are responsible to it.

The Rural District.— It is impossible for a county council to look into and meet the requirements of all the parishes within it in regard to sanitation, water supply and public health particularly. For a more efficient administration of these and other subjects of local interest, a county council may organise a number of parishes in a group. Such a group is called a rural district and is given a district council to manage its affairs. There may be several rural districts in a county. There are 474 rural districts in England, 199 in Scotland and 31 in Northern Ireland.

A district council consists of a number of elected councillors, whose number is determined by the county council and varies from district to district according to population. Every parish with a population of at least three hundred is entitled to elect one member to the district council. The central government uses the district councils as their agents for purposes of the Housing Act. The latter are thus authorised to acquire land and build on it. As sanitry authorities they have to deal with water supply, cleaning of streets and footpaths, sewerage and the removal of filth. Roads not maintained by the central government or by the county council are generally looked after by the rural district councils. Like the county councils, a district council maintains a permanent staff of its own. It may be stated that elections to the rural district council are held in April. Councillors are elected for a three-year term, one-third of them retire every year, thus necessitating annual elections of one-third of the

total strength of a district council.

The Urban District Council.— When any part of a county becomes thickly populated on account of the development of industry, the county council may organise it into an urban district and give it an elected council to make provision for its water supply, sanitation, public health and matters like gas, electricity or tramways. If an urban district has a population of over 20,000, its council is given the power to control its elementary school. If the population exceeds 25,000 a stipendary magistrate may be appointed. The powers of the urban district council continue to grow until they come close to those of a borough council. There are 564 urban district councils in England and Wales, and 25 in Northern Ireland.

District councils, rural as well as urban, elect their own chairmen from among their own members or outsiders. They meet once a month and, like the county councils, carry on their work with the help of committees and permanent staff. Every council appoints its own health officer, sanitary inspectors, a surveyor, a clerk, a treasurer, a tax collector and other officials.

The Parish.— The parish is the smallest unit of local government for rural areas. It can have a council only if the population is three hundred or more. It contains from five to fifteen members generally elected at a primary meeting by a show of hands, and lasts for three years. The affairs of a parish with less than 300 souls are managed by the parish meeting to which all ratepayers are invited. The duties of the parish meeting and the parish council are slight. They usually consist of looking after the Parish Hall and Library, the village green, and protection of the local rights of way. They are sometimes asked to take care of the water supply and the repairing of foot-paths. Sometimes there is a difficulty in finding suitable men to serve on the parish council; in such a case a person from another parish may be elected to the parish council. The council cannot have any paid officer other than the clerk. There are some 3300 parishes in England and Wales.

The Borough.— For purposes of local government boroughs possess a far greater importance than the rural or urban districts and the parishes; a very large proportion of the population of Great Britain lives in them. England and Wales have become highly urbanised during the last century and a half. The problem of municipal government is

more important in England than in India where about 75 % of the population live in villages.

Three kinds of boroughs are generally recognised— parliamentary, municipal and county. Parliamentary boroughs are areas or units for the election of members to the House of Commons; they have no concern with local government, no more than the historical counties. Municipal and county boroughs do not differ in any fundamental way in respect of structure or functions; they are constituted on similar lines and enjoy similar powers. The difference between them lies in the fact that a municipal borough is a part of the administrative county in which it lies and is subject to its jurisdiction, while a county borough is given the powers of a county and is therefore exempt from the control of the county within which it is situated. As soon as any borough acquires a population of 75,000 it may apply to the Ministry of Health for being accorded the status of a county borough. Of course, it is not necessary that it must do so; not all the boroughs apply for the status.

A borough (municipal or county) is an urban area which has received a municipal charter and is organised and governed under the provisions of the Municipal Corporations Consolidation Act of 1882 and its amendments. The process of obtaining a municipal charter is lengthy. The petition is addressed to the King, goes to the Privy Council which institutes an inquiry, and reports. If its findings are favourable, and no objections are raised either by a local authority or by any qualified voters of the area, an order-in-council is issued granting the charter and fixing the boundaries of the new borough. Boroughs differ in size and in the powers they enjoy. They derive their powers from many sources— from the Municipal Corporation Act, local and private Acts of Parliament, and from orders of certain departments of the central government authorised to do so. This diversity of sources causes variations in the powers of the boroughs.

The governing authority in a borough is the borough council composed of a mayor, councillors and aldermen. The size of the council is fixed by the charter on the basis of population, the lowest number being 6 and the highest 42. The councillors are elected by popular vote for a three-year term, one-third retiring every year, and the aldermen are chosen by the councillors from their own ranks

or from outside for a period of six years. The aldermen constitute one-third of the number of councillors, and half of them retire every three years. Councillors and aldermen have the same powers and functions; the latter enjoy a little more prestige than the former on account of their longer term and greater experience and provide the council with a steadying influence. For election purposes the borough is divided into a number of wards, each returning three or a multiple of three councillors. Elections are held every year on the 1st of November.

The councillors and the aldermen choose a mayor from among themselves or from outside. The mayor's office is one of great dignity and antiquity; its occupant is the first citizen of the borough and represents it in all important ceremonies. He holds office for a single year but may be re-elected. He presides over the council meetings and can participate in voting on all questions. He has however no executive authority. He makes no appointments and the council's resolutions do not require his approval. The office is not stipendary, though many boroughs avail themselves of their legal power to pay a salary because the social duties of the office entail much expense. The mayor's wife has no legal duties but is expected to take part in social activities. If the mayor has no wife, some lady relation of his does duty as mayoress; and if a woman is elected as a mayor, another woman will act as mayoress.

The borough council combines in itself executive and legislative functions. It appoints all officials and supervises the work of the various departments looking after water supply, sanitation, public health, education, streets and roads, police and fire protection. It exercises all the powers coming to the borough from the common law, general and special Acts of Parliament, and from the provisional order issued by the central government departments. Much of the work is done through committees. Law requires every borough council to have committees on finance, education, poor relief, old age pensions, fire protection, and a watch committee having to do with police. Sometimes the number of committees rises to 25 or even 30. The council itself meets in the town hall monthly, or fortnightly and even weekly if business requires, and carries on its work under rules framed by itself. The legislative function of the council consists of the making of bye-laws relating to all sorts of

matters, subject to the authority of the Ministry of Health to disallow any rule made by it if found contradictory to a national law. The council is also responsible for the preparation of the budget, makes all appropriations and levies rates and taxes to meet the expenditure and borrows money in so far as the Treasury authorities in London permit. The clerk, the treasurer, the engineer, the public analyst, the chief constable, and the medical officer are among the permanent salaried officers appointed by the council for carrying on the work of borough government with the help of subordinate staff. As stated above it is one of the tasks of the council to supervise their work.

As in the counties, so in the boroughs, all administrative appointments are made by the council on merit. No competitive tests are held, but enough care is taken to see that only fit and suitable candidates are taken. Though the council can dismiss its employees at any time, practically they have security of tenure provided their work is satisfactory. Security rests on tradition and not upon law. The fact that political and personal considerations do not usually enter in the making of appointments coupled with the security of tenure makes municipal administration very efficient.

Central Control over Local Government.— From the foregoing account of local government it would be clear that the Britishers enjoy a large measure of freedom in the management of their local affairs. Whether it is a county, a borough, an urban or a rural district, or a parish, the area has a popularly constituted council in which the authority to manage local affairs in vested. The council elects its own chairman, appoints its own staff, raises funds by taxation within authorised limits, and spends it on approved items. It initiates and carries out its own policies. In other words, the Britishers have local self-government; they enjoy municipal home rule. Local bodies are not a mere subordinate part of the government machinery; they may be said to have wills of their own and to exist in their own right. They form as it were a detached system.

This, however, should not be taken to mean that they are allowed to go their way without any control or interference from the central government at London. There has always been a certain amount of control from above; but it was not much in the pre-reform days. About a century ago the central government did not concern

itself much with purely local affairs. The counties and the boroughs taxed, spent, built roads and did other things as they liked without much central interference. But this is no longer the case to-day. Central control has increased considerably and tends to increase, though it is not so great as in France and other countries of Continental Europe and in India.

Central government exercises control over local bodies in several ways. Parliament passes laws creating new and abolishing old areas of local government and providing that local authorities may do certain things with the approval of the appropriate department of the Government at London. The laws made by Parliament may even lay down rules and regulations for the guidance of local authorities. As society becomes more complex and interdependent and conceptions of the scope of governmental activity broaden, local bodies are asked to take up one new activity after another. This invites greater central control to secure uniformity. But what gives to the national authorities a great amount of control and power of interference is the system of grants-in-aid from the central funds. This is the main channel through which central control of local government has been expanding in England. The government offers subsidies to local bodies in aid of education, police, health, and other services, and then claims the right to inspect whether the sums granted by it are being spent to the best advantage or not. Government inspectors follow in the wake of government grants; they come not only to see and hear on behalf of the national government but also to speak and act for it. If they find that the work of a local body is not upto the mark or that it does not observe all the rules and regulations made by the government, they report to the national authorities who threaten to stop the grant-in-aid if conditions do not improve. The central government thus exerts constant pressure through its inspectors. It is in a position to check extravagance as well as to punish slackness. The government can also secure the handing over of the powers of a local authority to Commissioners appointed for the purpose by the Ministry of Health if an authority persistently defaults in the performance of its duties.

It may be pointed out that prior to the Local Government Act of 1929 the central government used to give separate grants-in-aid for the different services, one definite sum for education, another for

housing, and another for police, and so on. If the grant for one specific purpose was not properly utilised, it alone could be curtailed or withheld; the other grants were not affected. But the Act abolished separate grants and provided that a large sum may be advanced which may be expended in any manner as the body may like. The arrangement makes it possible for the government to withhold the entire grant or a portion of it if they feel dissatisfied with any branch of local administration. It would thus appear that it is mainly through the medium of finance that the central government controls the administration of local affairs. The control is more administrative than legislative. The British Parliament does not seek to control local administration by legislative measures; it authorises some department of the central government to determine whether a local body may do one thing or another and then sees that the work is being efficiently done. It should not be forgotten that Parliament passes law prescribing what the areas of local government shall be and what kind of government they shall have; it also determines what activities they shall undertake and what not. So far the control is legislative. It however does not go far enough and does not affect the character of administration. Through grants-in-aid and the power of inspection and advice the different departments exercise administrative control. In this respect the British method differs from the American.

Another point to be borne in mind in this connection is that central control is exercised through several departments and not through one as is the case in France where it is much greater. The ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the ministry of agriculture are the chief departments with which local administration comes into intimate contact and which exercise supervision over it. The ministry of health has general control over poor relief, water supply, sanitation, and public health. The home office supervises police and is responsible for the inspection of factories and mines. The board of education looks after elementary, secondary, technical and collegiate schools. The ministry of transport has jurisdiction over tramways, street railways, ferries, docks and harbours. The ministry of agriculture supervises the enforcement of laws relating to markets, food and drugs, diseases of animals, and other matters. The departments do not drive the machinery of local government

(except for the management of London police by the Home department); it is driven in each area by the council and the permanent staff it has appointed. The function of the national departments is only to supervise and to give information and advice. They also hear complaints, make investigation and settle disputes. They lay down rules and regulations as to organisation and procedure and other matters which the local authorities are bound to follow. They may assent to the doing of one thing and disallow the doing of another. They may do all this and more, but still it is not their business to undertake the performance of any work falling within the scope of local authorities. They simply see that the latter do their work properly.

The British plan has many good features. It combines the advantages of local autonomy with strong central control. Local self-government is of very ancient origin; the Anglo-Saxons gave to England her system of local government and the habit of local autonomy which survives till this day. Central control is a phenomenon of the recent past and has come about gradually and slowly without any definite plan or theory. It developed in response to the needs of the situation, and has resulted in much good. It has brought about much needed uniformity, order and efficiency without doing injury to the freedom of the people to manage their local affairs. Central control is not rigid and allows considerable latitude to local authorities to deal with their individual problems; it arouses no misgivings because it is not regarded as a means of gaining political power. It is essentially a form of expert supervision by a number of different departments. Nevertheless, there are critics who apprehend danger to the future of local self-government from increasing central control. Some also 'wonder whether county, and specially borough Government will not eventually break down or at all events lose much of its present efficiency, under the steadily growing burden of duties and responsibilities devolving upon it.'* In view of the elasticity of central control and the love of local autonomy ingrained in British character such dire consequences are not likely to follow; we may easily dismiss the apprehension. There is however much scope for reform in the machinery of self-government on its structural side. There seem to be too many areas of local

* Ogg: *European Governments and Politics*, page 367.

government with overlapping jurisdictions. Something can be said for the principle of one primary local government for a given area.

Government of London.— London has a system of local government different from that prevailing in other English municipal cities and boroughs. In this respect it does not differ from most of the great capitals of the world like Paris, Berlin, Rome, Tokyo and Washington. From a very early period London has been treated as quite apart from other parts of the country. Parliament has often legislated for London alone. The Municipal Corporations Act of 1835 which provides the basis of the modern municipal government in Great Britain left London untouched. Parliament had to pass special legislation to meet the requirements of the capital in 1855, and again in 1899. It has its own Public Health Act, Education Act, Building Act, etc.

For purposes of local government London has been divided into three distinct parts or areas, each with its own governing organs. They are (*i*) the City of London, (*ii*) the County of London, and (*iii*) the London Metropolitan District. What is technically known as the City of London is a very small part of the modern capital and constitutes its historic core. It has an area of about one square mile (while the Great London covers about 700 sq. mls.) and preserves its old boundaries, street names and forms of government. It has almost ceased to be a residential region and has become the business and financial centre of the metropolis. Its resident population consisting mostly of watchmen, etc., amounts to 14,000. It is governed by a Lord Mayor and three councils, the Court of Aldermen, the Court of Common Council, and the Court of Common Hall.. The Court of Aldermen consists of the Lord Mayor and 26 aldermen elected for life. Nowhere else are aldermen chosen for life. The Court of Aldermen has insignificant powers ; it licenses brokers and keeps city records. The Court of Common Hall is composed of the members of the Court of Aldermen and the Liverymen of City Companies. These companies are the descendants of the medieval Guilds of Craftsmen and Merchants. The court elects the Sheriff every year, and selects two aldermen from among whom the Court of Aldermen will finally choose the Lord Mayor. Its powers are also unimportant. The Court of the Common Council is the real governing authority of the City. It consists of 200 annually

elected councillors and 26 aldermen of the Court of Aldermen. It makes bye-laws for the City, looks after the bridges in the City, owns and manages much property and performs all other functions except fire protection, water supply, poor relief, public health, street railways and main drainage. It has its own police force, civil courts and criminal courts of summary jurisdiction. It has committees to look after and supervise the various services it performs.

The County of London is an administrative county. Its boundaries were drawn by the County Councils Act of 1855 which also provided it with an elected council. In 1898 there were created within the County of London 28 Metropolitain Boroughs having subordinate powers. The London County Council is its governing authority. It consists of 124 elected councillors and 20 aldermen chosen by the former from among themselves or from outside. The councillors are elected for three years and the aldermen are chosen for six years. Half the aldermen retire every three years. The councillors and the aldermen together elect a chairman. He may be chosen from outside. Since 1935 the chairman, like the Lord Mayor, bears the title Right Honourable. The powers of the L. C. C. are in some respects like those of county councils elsewhere, and in some respect less, because in the capital the Central Government judges it best to perform certain functions itself; *e. g.*, the police functions. The council has 18 standing committees and one executive committee consisting of the chairmen of the 18 standing committees. The Council is one of the most vigorous and industrious in the country and has many notable achievements in education, public works, sanitation, etc., to its credit. It administers an area of 117 sq. miles containing about 40 lakh persons. It is the sole authority in respect of main sewerage and sewerage disposals, and has charge of roads of metropolitan character, tunnels, ferries, bridges, fire protection, sanitation, public health, housing, education, recreation grounds and public fairs. It operates tramways and maintains a fleet of passage boats on the Thames. Water supply is managed by a Metropolitan Water Board. The Council has an annual income of £ 40,000,000.

Each of the 28 Metropolitan Boroughs created by the Act of 1898 has a local governing authority consisting of a mayor, elected councillors and aldermen. The powers of these councils are narrower than those of other borough councils. They construct main highways,

attend to street building, paving, lighting and cleaning of streets, and also enforce the Public Health Act. They also have charge of Public baths, washing houses, public libraries, local cemetries and workmen's dwellings. They supplement the work of the L. C. C. by providing parks and recreation grounds. The Metropolitan Borough Councils may be said to be local government within local government.

The British and The Indian Systems of Local Government Compared.— It would not be improper to conclude this chapter with a comparison between the British and the Indian schemes of local self-government. Like many other political institutions established by the British government in our country our local bodies are modelled on the British pattern. In their composition and functions they thus show many similaritles to the county and borough councils in England. Like the latter they are at the present time popularly elected. Adult franchise and joint electorates have also been recently introduced. It may even be maintained that they are expected to render the same type of service to the persons residing within their jurisdictions as the British local bodies do. It must, however, be admitted that they have not been able to reach the same standard of efficiency as attained in Great Britain. Our muncipal and district boards are very much behind the English county and borough councils in their social work. It should interest the reader to know the type of work that is being done by the latter so that he may realise how far short our local bodies fall in the discharge of their duties.

The social activities of the local bodies in England may be grouped under the following heads: public health; education; housing; planning and public assistance. Public health activities may be further subdivided into (*i*) general measures to prevent disease and promote health, (*ii*) the treatment of the sick, and (*iii*) the care of mothers and children. Under (*i*) might be included provision for the adequate supply of water for every house and school, the control over wells and other small natural supplies of water, prevention of contamination of drinking water, removal of refuse collected in dustbins, and the effort to see that no building is erected in places rendered unhealthy by being near to sewerage canals, etc. In bigger towns the councils frequently establish baths and public laundries. Health authorities appoint sanitary inspectors to visit shops and see that

impure food is not served or sold to the people. Our municipal boards do generally undertake such like activities though not to the same degree, but not so the district boards to any appreciable extent. The villages served by them are usually dirty and have no proper drainage system.

The arrangements made by the local authorities in England for the treatment of the sick are far superior to those existing in our country. There the more dangerous infectious diseases like diphtheria, scarlet fever, typhus and smallpox are 'notifiable'; the person in whose house they occur must inform the Medical Officer of Health who has to make arrangement for the removal of the patient to an isolation hospital, disinfect the house and take other steps to prevent the disease from spreading further. This service is run in co-operation with voluntary hospitals. The municipal boards in our country do not take steps to isolate persons suffering from infectious diseases. We are also far behind the British people in providing for maternity and child welfare. An Act passed by the British Parliament in 1936 makes local authorities in charge of education also responsible for maternity and child welfare. At places they have built clinics and maternity homes of their own with the result that infantile mortality has greatly decreased in England. A very large number of mothers with young children attend welfare centres.

Elementary education is free and compulsory in Great Britain. Local authorities are bound to provide education for childern from five to fourteen years of age, and appoint Attendance Officers to see that all parents send their children to school. Special schools exist for physically and mentally defective children. In our country such schools are few and far between, and free and compulsory primary education exists at few places. Our local bodies have not paid sufficient attention to this problem.

The Britishers have realised that bad houses, like bad food, cause ill health. The Act of 1936 summarises the provisions of earlier Acts in regard to the inspection of houses to see that they are fit to live in. Persons are not allowed to live in unhealthy dwellings which have either to be improved or are destroyed. The Medical Officer of Health has also to pay attention to slums. Efforts are being made to improve the existing slums and prevent the construction of new ones. To provide for the habitation of those who are

made to vacate dwellings declared unfit for human use and also for meeting the needs of a growing population many local authorities have built new houses. Since the first World War over three million houses have been built and one-third of the population has been rehoused. The record of Indian municipal boards is very meagre in this respect.

Planning does not seem to exist in our country except where Improvement Trusts exist and function in a proper way. In England, Parliament passed a Town and County Planning Act in 1932 under which local bodies may take steps to preserve the health and beauty of the land and prepare schemes for builing new houses, etc. Under Public Assistance it becomes the duty of local authorities to make provision for the aged, the infirm and the unemployed under other groups. Our municipal and district boards do not think it to be a part of their duty to help the poor, the needy and the infirm.

Another important difference between the functions of local bodies in the two countries is to be found in the fact that in England they are entrusted with the duty of policing the district. Every county has its own police force which performs all the police duties withing the area. The county police is annually inspected by the Home Office, and if the results are satisfactory, half the cost of its maintenance is met by the central government. In our country the district and municipal boards perform no similar function ; the law does not empower them to do so. It would thus appear that though constituted in a similar way, the agencies of local self-government in the two countries show important differences in their working.* It may also be pointed out that here in India the degree of central (State) control over local bodies is much greater than in England and is exercised in a more direct manner. We have no bodies parallel to the parish and the urban and rural district councils in our districts. Village panchayats, constituted on a popular basis, may be regarded as corresponding to parish councils.

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* To a certain extent this is due to the fact that the scheme in India is not even a century old and has not taken deep roots in the soil.

Chapter XII

BRITISH DEMOCRACY

Introductory.— Having completed our survey of the main components of the British political system we are in a position to determine the extent to which Great Britain has been able to achieve the democratic ideal. We started with the assumption that Britain is the traditional home of civil liberties and the British people are a free people enjoying the benefits of democratic government. The validity of this assumption has been questioned in certain quarters. It is alleged that there are certain features of the British system which take away from its democratic character and make the State an instrument of the capitalists. So long as the capitalistic structure of society exists and the capitalists continue to mould the policies of the state to their own advantage, democracy is bound to remain a distant and unrealisable ideal. James Harvey and Katehrine Hood have given their own analysis of the British system in their book, '*The British State*', from this point of view and tried to show that according to the Marxian view Great Britain is not a genuine democracy. The British electoral system, the two-party system, the growing dictatorship of the Cabinet, the presence of the House of Lords and of the Monarchy, the monopoly of the key posts in the permanent Civil Service by persons drawn from the ranks of the nobility and the upper middle class, and control of the press and broadcasting by big business strongly militate against the claim of Great Britain being a truly democratic state. It is alleged that the administration is carried on in the interests of big business and not in those of the mass of people.

Democratic Requirements.— It is not possible for us to examine here all these and other charges of a similar nature. All that we can do is to set forth what we regard as the contents of the democratic ideal and determine the extent to which they have been approximated in Great Britain. We maintain the view that if government is to be of the people, by the people, and for the people, it must not only be based on the consent of the people and be accountable to them, but also derive its power from the people. It is not at all difficult to show that the British government satisfies these requirements. It is is based on the consent of the people, is responsible to them and

derives its power from them, the capitalistic structure of society and the presence of the hereditary monarch and the House of Lords notwithstanding. Government by consent does not mean that *every* citizen should approve of *all* the acts of government and that the latter should never use force to enforce its laws against recalcitrant persons ; it only means that it should not use force as a substitute for consent, and that if a majority of citizens disapprove of its policies, it should make way for another one. This implies that there should be ample opportunities for the citizens to know what measures the government is contemplating and to criticise them, and that all the citizens should have full freedom to build up organisations having for their aim the displacement of the existing government by a new one by peaceful and constitutional means and carry on propaganda in their favour. In other words, government by consent demands that there should always be an active and vigilant opposition which can freely criticise the government and have full opportunities to convert a majority of the electors to its principles and programme. The British system fully satisfies this fundamental requirement. In Great Britain the government does not gag its opponents or suppress them by force as Mussolini and Hitler suppressed their opponents, but gives the opposition the fullest opportunities to criticise it, and meets their criticism by arguments. Great Britain is a true democracy because of the presence of a free Opposition in Parliament which functions as an alternate government.

British Government, a People's Government.— One of the greatest merits of the British electoral procedure and the two-party system is that they enable the people to choose their government by deciding which of the two contending parties is to have a majority in the House of Commons. As we have had occasion to observe in another connection, the British elector votes, not so much for this individual candidate or that, as for one party rather than the other, and thereby indicates his choice between two different lines of policy. The party which gets a majority of seats in the House goes there with a mandate from the people for a period of five years, and has to come before the people for a renewal of codfidence, if it wants to continue. If this does not give the British people a government based on the will or consent, then it is doubtful if any other system like the Soviet would give any people such a government.

There are other factors also which show that the British Government is a government based on the will of the people. Since the party which has been returned to power in a general election wants to remain in power for another and yet another term, it must so act as not to alienate the sympathy of the electors. Every mistake it makes becomes an argument against it, and every achievement an argument for it. It is therefore its constant aim to avoid mistakes and add to its achievements. The government keeps itself in close touch with the pulse of public opinion in the country in several ways. Not the least important of them is through the individual members of the House of Commons. Whenever anything appears to go wrong in the constituency of any member, he sounds an alarm in the House, and the Government has to take note of the alarm. In this connection it is worth remembering that as a result of recent developments the Cabinet has become responsive and responsible to the electorate rather than to Parliament. It cannot afford to ignore or neglect public opinion. It is no doubt true that no precise method of detecting and weighing changes of opinion between general elections has been found; nevertheless the fact remains that every government remains sensitive to public opinion and keep its fingers on its pulse. It is fully conscious of the fact that its majority is derived from the will of the people and the power it possesses is really the power of the people, and must therefore be exercised in conformity with their will.

The presence of hereditary monarchy and the predominantly hereditary House of Lords does not detract from the democratic character of the British system. These two institutions have been completely denuded of real power; neither of them can interpose insuperable obstacles in the way of public opinion. We have seen that monarchy survives in Great Britain because it has been no bar to the growth of democracy in the country; it has endeared itself to the people by demonstrating its deep regard for the welfare of the masses. The House of Lords is indeed an anomaly in a democratic country; its wings have, however, been clipped. It cannot force a popular government out of office or impose its view on it. It has become a truly secondary chamber. In Great Britain cabinet government is government of the people.

It is true that in Great Britain there is no theoretical or formal

recognition of the doctrine of popular sovereignty. Sovereignty resides in the Queen-in-Parliament. This may be regarded as a shortcoming. But the doctrine of the unrestrained sovereignty of Parliament does not at all mean that the liberties and rights of the people are at the mercy of a despotic Parliament. We have seen that Parliament represents the people; its power is ultimately derived from the people; it cannot possibly go against popular wishes. Though there is no judicial review of Acts passed by Parliament, the prevalence of Rule of Law is guarantee enough that the civil liberties of the individual citizens shall be secure against infringement by either the sovereign Parliament or the highly powerful government. For all practical purposes, the measure of civil liberties enjoyed by the British people is no less than that enjoyed by the citizens of any country where the Constitution guarantees fundamental rights, and the system of judicial review prevails. This is because, as Jennings has so well put it, 'liberty is a consequence not of laws and institutions but of an attitude of mind.'*

Civil Liberties.— The British people have never thought it necessary to protect their civil liberties by means of a Bill of Fundamental Rights and making it a part of their constitutional law. Such a course may have much value in a country like the United States of America where the Constitution is the supreme law of the land and cannot be easily amended. It can have no similar importance in Great Britain where Parliament is supreme and can theoretically alter and amend the constitution without recourse to any special procedure. Neither do the British people think that the best way to protect the liberties is to define them in minute detail and enshrine them in a code of individual rights for the guidance of the law courts. They deem a code of individual rights superfluous, because for them liberty does not consist in a series of specific rights; it is rather 'a general state of individual freedom which springs from the fundamental principle of the supremacy of law which is enshrined in the Common Law and manifests itself in every sphere of human activity.'†

Individual freedom means and results from the absence of arbitrary government. In Great Britain there are so many limits upon the powers of government that arbitrary power cannot flourish

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* Jennings: *The British Constitution*, page 207.

† Mathiot: *The British Political System*, page 316.

there. No doubt, the reigning monarch has a number of prerogatives; but as is well known their exercise is not left to the discretion of the King or the Queen; it is determined by well-established principles and conventions. The Cabinet is indeed very powerful, and the growing subservience of the House of Commons may seem to have invested it with dictatorial power. But as we have already seen, the Cabinet cannot afford to fly in the face of public opinion; it would dig its own grave if it were to flout public will and act in an arbitrary manner. It may be repeated that the Cabinet carries on its work under the sharp and critical eyes of the Opposition which would not miss any opportunity to publicise and make capital out of its mistakes and indefensible policies. The Monarch, the Cabinet, Parliament and the Courts of Law are, all of them, bound by the Rule of Law which excludes all arbitrary action on their part.

The liberty for which the Britishers first fought was liberty in the religious sphere. They next struggled for freedom from royal absolutism. To-day they have realised freedom from the tyranny of majority and of minority. In the words of Tennyson, liberty has 'broadened down from precedent to precedent'; it embraces all types of personal freedom including freedom of speech and association, freedom of press, freedom of public meeting, and freedom of vocation and conscience. One of the most important guarantees of their liberties is the independence of the judiciary.

In short, the real source of the liberties enjoyed by the British people is not laws and institutions, but the spirit of the people. This is one of the main reasons why the British political institutions have not been able to safeguard individual liberties in other lands to which they have been transplanted. We, in our country, have copied many of them, but have not been able to develop the spirit and temper of mind of the British people which induces them to tolerance and compromise, and to respect the right of others to criticise. The temper of mind which is the secret of the success of the British institutions may best be described in the classical words of Mill:

> We can never be sure that the opinion we are endeavouring to stifle is a false opinion; and if we were sure, stifling it would be an evil still. If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.

REFERENCES FOR STUDY

The number of books written on the British system of government is very large. No useful purpose can be served by placing before the student a long list of them. Therefore the names of only a few of them are given below. For the undergraduate Jennings' *British Constitution* is probably one of the best. He may with advantage study Ramsay Muir's *How Great Britain is Governed.* He would also find an excellent survey of it in Professor Zink's *Modern Governments,* and in Professor Neumann's *European and Comparative Governments.* Professor Mathiot's volume *The British Political System* is also an excellent and profound study and should be read. The post-graduate student should consult Laski's *Parliamentary Government in England,* and Dr. Jennings' scholarly works, *Cabinet Government* and *Parliament.* Finer's *Modern Governments* also contains a fine account of the system.

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